

No. 35070-0-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

In re the Marriage of:

PETER PAUL TOLAND,

Appellant,

and

ETSUKO FUTAGI TOLAND,

Respondent.

FILED
COURT OF APPEALS
DIVISION II
OCT 16 PM 2:31
STATE OF WASHINGTON
BY [Signature]

BRIEF OF RESPONDENT

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This appeal arises from a challenge by Peter Toland to dismissal of the dissolution action he filed in Pierce County Superior Court. Respondent Etsuko Toland provides the following response to the appellant's opening brief.

A. COUNTERSTATEMENT OF THE ISSUES

Etsuko acknowledges the assignments of error presented by Peter in his opening brief, but she believes the issues are more appropriately framed as follows:

1. What is the proper standard for review of a decision to stay proceedings?
2. Did the trial court abuse its discretion by granting Peter's own request to stay the Washington action?
3. Did the trial court err by dismissing this case in accordance with its uncontroverted order?
4. Where the trial court made no ruling as to its jurisdiction over Etsuko and Erika and was not asked to consider its jurisdiction to enter a parenting plan, should this Court adjudicate the issues on review?
5. Where Peter did not appeal the Tokyo Family's Court's entry of a final decree of dissolution, should this Court dignify his collateral attacks on that decree?

6. Should this Court award Etsuko reasonable attorney fees on appeal?

B. STATEMENT OF THE CASE¹

Etsuko Futagi Toland (Etsuko) and Peter Paul Toland, Jr. (Peter) were married in 1995 at Tokyo, Japan. CP 1. Etsuko was a Japanese citizen at the time of their marriage. CP 218. Peter is a citizen of the United States and an officer in the United States Navy. CP 107, 108.

The couple lived in Washington State while Peter was stationed there from July 1996 to July 1999. CP 36, 149. When Peter was reassigned, they relocated to Japan. CP 218. The Tolands' daughter, Erika, was born in Japan on October 17, 2002. CP 104. Etsuko was a Japanese citizen at the time of Erika's birth, and she became a naturalized citizen of the United States six months later.² CP 75.

¹ Respondent provides copies of selected documents from the record in the Appendix. A procedural chronology of the case is also included in the Appendix at A-1.

² Peter represented to the trial court that Etsuko "lost her Japanese residency and citizenship." CP 67. He asserted "there is a very good chance that Japan will force her to leave." CP 69. But Peter himself precipitated Etsuko's denationalization, *after he filed for divorce in Washington*, by reporting her to Japanese officials without her knowledge or consent. CP 92, 111-12. Etsuko's Japanese citizenship has now been reinstated.

According to Etsuko, she and Peter had “an ordinary married life” until their daughter was born. CP 36. But afterward, their relationship grew troubled.³ *Id.* Etsuko left her home with her daughter in July 2003. *Id.* Peter and Etsuko have lived apart since that time. *Id.*

Peter filed a petition for dissolution of the parties’ marriage, along with a proposed parenting plan, child support worksheets, and a financial declaration, in Pierce County Superior Court on September 29, 2003.⁴ There is no record that the documents were served on Etsuko.

In November 2003, Etsuko made a mediation request to the Tokyo Family Court for reconciliation of the parties’ marriage. CP

³ In Etsuko’s petition for dissolution, Peter’s conduct after the birth of their daughter is described as follows:

[Peter] did not modify his terrible behavior at all even when [Etsuko] was holding Erika in her arms. This behavior became more pronounced when [Peter] was dissatisfied with something. He raised his voice right into [Etsuko’s] face and carried on his complaints/protests regardless of the situation. Further [Peter] would continue to shout at [Etsuko] so she could not make any counterargument to him. [Peter] maintained such behavior with the intention of making [Etsuko] obey his demands. Although his behavior did not involve actual physical violence, [Peter’s] behavior is considered to constitute violent acts This violent behavior worsened and was carried out on a daily basis, which drove [Etsuko] to suffer from severe emotional distress. [Peter’s] behavior was violent enough to create abhorrence and fear in [Etsuko]. [Etsuko] could no longer tolerate [Peter] due to his behavior, . . . and this has not changed even after more than a half year of separation.

CP 36-37. A copy of the petition in translation is included at A-26 to A-78.

⁴ A copy of the documents is included at A-2 to A-25.

40. After a third mediation session failed to resolve the parties' issues, Etsuko petitioned the Japanese court for dissolution. *Id.*

Etsuko's petition was filed on April 1, 2004. CP 34. Peter retained counsel in Japan, appointing his attorneys to "handle any legal matters regarding the divorce petition." CP 58. A power of attorney executed by Peter authorized his lawyers in Japan to "settle, mediate, relinquish the petition, acknowledge, or to retire by appointing alternative attorneys." *Id.*

After almost eight months of inactivity in Washington, Peter filed an amended petition and proposed parenting plan⁵ on May 10, 2004. CP 1. He apparently served the pleadings on Etsuko more than two months after her own petition had been filed.⁶ A-51.

⁵ The amended petition, submitted after Etsuko filed her petition, does not disclose the Japanese divorce proceeding. CP 4. And the parenting plan varies substantially from the plan Peter originally filed. He now proposed not only that his infant daughter reside with him, but that Etsuko's visitation be restricted solely to "the city where the father is located in the United States." A-46. As factors justifying the restriction, he alleged that Etsuko had abusively used conflict "which creates the danger of serious damage to the child's psychological development" and that Etsuko "withheld . . . access to the child for a protracted period without good cause." A-45. A copy of the amended petition and parenting plan is included at A-38 to A-50.

⁶ Personal service upon an individual in a foreign county "may be made by any person who is not a party and is not less than 21 years of age or who is designated by order of the court or by the foreign court." CR 4(i)(1). On its face, the declaration of service is silent as to these qualifications. Although dated May 7, 2004, the server swears under penalty of perjury that Etsuko was served on June 7, 2004. A copy of the declaration of service is included at A-51.

Peter also petitioned Tokyo Family Court for mediation to determine child custody and visitation. CP 115. He and Etsuko, who were each represented by counsel, completed mediation on July 12, 2004. *Id.* The finalized mediation record expressly addresses jurisdiction: “Both the Petitioner and the Respondent acknowledge that [the] Japanese Court has the international jurisdiction over the settlement of the child custody (visitation negotiation).” *Id.* The mediation agreement “has the same effectiveness as a settled adjudication.”⁷ CP 116.

The parties agreed to detailed terms and conditions regarding visitation, and Peter agreed to pay monthly child support.⁸ CP 116-17.

Peter left Japan on July 21, 2004 for a military assignment in Washington, D.C. CP 67, 149.

Etsuko next moved to dismiss the Pierce County action on the grounds that Washington lacks both subject-matter jurisdiction and personal jurisdiction over Etsuko and Erika. She also asserted that Washington would be a *forum non conveniens*. CP 10-11.

⁷ A copy of the finalized mediation agreement in translation is included at A-52 to A-54.

⁸ Despite their agreement, Peter has not exercised visitation with his daughter since he and Etsuko separated in 2003. And Etsuko has received no child support from Peter – not even the basic obligation calculated in his own Washington child support worksheets. A-15.

Court Commissioner Ronald Heslop ruled that the action should be dismissed for lack of jurisdiction. CP 126. But, in response to Peter's motion to revise the commissioner's ruling, Judge Bruce Cohoe vacated the dismissal order.⁹ CP 128; 150.

Concluding that Washington has jurisdiction over Peter and the parties' marriage, the Pierce County court granted Peter's request to stay the action "[p]ending definitive rulings in Japan either accepting jurisdiction or rejecting jurisdiction." CP 150. The court made no ruling as to jurisdiction over Etsuko and Erika or the parties' property. *Id.*

While the Washington action was stayed, Peter filed a "Bill of Complaint" for divorce in the Circuit Court of Arlington County, Virginia. CP 347. Declaring that he had become a resident and domiciliary of Virginia, Peter moved to dismiss the Washington action. CP 370, 380.

At the motion hearing, Judge Cohoe stated he had received a phone call from the judge in Virginia. RP (Oct. 21, 2005) at 10. The two judges concluded that if there were to be a divorce trial in the United States, "Washington is the appropriate state." *Id.*

Judge Cohoe also presented the following analysis:

⁹ A copy of Judge Cohoe's September 15, 2004 order is included at A-55 to A-56.

I have a very definite feeling that Mr. Toland is doing some forum shopping. . . . He started this divorce here in September of '03. She then started her divorce in Japan, and proceeded with that divorce ultimately to conclusion. He never served her . . . until . . . June of the following year. So that divorce sat here for a long time with not being perfected in any way. She, then, in the meantime, started her process, and it went ultimately to conclusion, and he engaged in that process.

. . . .

Now, if Japan had no jurisdiction to do that, and there are certainly arguments, I think that issue has got to be appealed in Japan. If it gets reversed, then fine, we proceed with this case. If it doesn't, then the Japanese case is the final word as far as I'm concerned.

Id. at 14-16.

The court reaffirmed its September 15, 2004 order staying the case. CP 396.

Peter based his motion to dismiss on the premise that “neither party seeks to have a Washington Court resolve their dissolution action.” CP 392. But when the Virginia court dismissed, he sought to lift the stay in Washington, “thus allowing the dissolution of marriage action to proceed, including resolution of child custody and residential time, support issues and property division.” CP 155.

Peter attempted to proceed in Washington – even though Tokyo Family Court had already determined several months earlier that jurisdiction was proper in Japan and had “entered its decree

and decision dissolving the marriage, awarding custody and rights of visitation regarding the minor child, and making a division of assets and provisions for support.”¹⁰ CP 326.

The Pierce County court denied Peter’s motion to lift the stay, and it dismissed the Washington action with prejudice on June 2, 2006.¹¹ CP 335-36. Peter now appeals the dismissal.¹² CP 337.

C. SUMMARY OF ARGUMENT

The trial court did not abuse its discretion by granting Peter’s own request to stay the proceeding. And the court did not err by subsequently dismissing the matter in accordance with the plain language of its uncontroverted order.

The trial court did not rule regarding jurisdiction over Etsuko and Erika and was not asked to consider whether it had jurisdiction to enter a parenting plan. This Court should not adjudicate these jurisdictional issues for the first time on review.

¹⁰ The record shows that the two-week time period in which to appeal a decision of the Tokyo Family Court begins to run when the parties receive the dissolution papers. CP 388. The final decree was entered on September 29, 2005. *Id.* But Peter discharged his attorneys in Japan that same day, leaving no one to receive the papers. *Id.* The case was not concluded until March 10, 2006. CP 160. A copy of the Tokyo Family Court’s final decision in translation is included at A-57 to A-78.

¹¹ A copy of Judge Serko’s order is included at A-80 to A-81.

¹² A copy of the notice of appeal is included at A-79.

Peter did not appeal the final decree of dissolution granted by the Tokyo Family Court. This Court should not dignify his collateral attacks on the decree and on the Japanese court.

Etsuko is entitled to reasonable attorney fees and costs on appeal.

D. ARGUMENT

1. Abuse of discretion, not de novo review,¹³ is the proper standard to review a decision to stay proceedings.

Peter first assigns error to Judge Cohoe's order of September 15, 2004. Br. of Appellant at 1. In that order, the court vacated the court commissioner's earlier ruling and stayed the Washington action.

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 350, 16 P.3d 45 (2000) (quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163, 81 L. Ed. 153 (1936)).

A court's decision to stay proceedings is reviewed for an abuse of discretion. *Id.* at 348. "Abuse of discretion does not exist unless it can be held that no reasonable person would have ruled

¹³ Br. of Appellant at 16-17.

as the trial court did on the facts before it.” *In re Marriage of Pilant*, 42 Wn. App. 173, 176, 709 P.2d 1241 (1985).

In the present case, the trial court found that the parties were married in Japan, that they lived in Japan for five years, that Etsuko and Erika continued to reside in Japan, and that there was a pending dissolution action in Japan in which Peter had participated.¹⁴ CP 149-50. Under these facts, the trial court did not abuse its discretion by staying the proceeding in Washington.

2. The trial court did not abuse its discretion by granting Peter’s own request to stay the Washington action.

Peter contends the trial court should have determined whether the Japanese court had personal jurisdiction over him and whether Washington had personal jurisdiction over Etsuko, custody jurisdiction over Erika, and subject-matter jurisdiction over the parties’ property rather than staying the action. Br. of Appellant at 2.

¹⁴ Peter argues the trial court “mistakenly assigned no significance to the fact that the Washington case was the first to be filed.” Br. of Appellant at 18. He is correct that an action for dissolution of marriage under RCW 26.09 may be *commenced* by filing a petition. CR 4.1(a). The court acknowledged that Peter’s petition was filed first. RP (Oct. 21, 2005) at 14-15. But a Washington court cannot *proceed* until 90 days have elapsed from the date when service of the summons was made on the respondent. RCW 26.09.030. Thus, the Washington court was powerless for almost eight months after Peter filed his petition because he did not serve Etsuko. In the meantime, Etsuko filed and served her own petition and proceeded to finality in the Japanese action. Peter cites no authority for his allegation that the trial court committed “legal error” under these circumstances. Br. of Appellant at 18. Likewise, he offers no grounds for an inference that the Japanese court is bound by Washington’s Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *Id.*

The relief granted by the court, however, is precisely what Peter sought: “Petitioner respectfully requests that the court set aside and vacate the order of the commissioner on 8/24/04 which dismissed the action. *If the court wishes, the matter could be re-visited once the court in Japan issues a decision based on jurisdiction.*” CP 139 (emphasis added).

In a declaration filed with the court, Peter’s counsel in Japan requested “that the court in Washington State not make a jurisdictional decision on the case until a ruling is issued in Japan.”¹⁵ CP 61.

And Peter’s Washington counsel reiterated this position at the motion hearing:

My view of it is why not wait. This court should wait until we have the outcome of the hearing in Japan whether they are going to hear it. . . .

Mr. Toland has not requested substantive relief from the court. Ms. Toland won’t be prejudiced at all while we wait for that decision

RP (Sept. 10, 2004) at 8.

Peter did not challenge the trial court’s favorable ruling prior to this appeal.

¹⁵ Peter did not expect the court in Japan to hear Etsuko’s petition. His counsel also declared it “likely that the court in Japan will dismiss the case here.” CP 61.

To permit Peter to fault the trial court for granting his requested relief would be to permit him to invite error or to take inconsistent positions in the same litigation – after depriving the trial court of the opportunity to rule on the issue.

Under the doctrine of invited error, a party “cannot set up an error at trial and then complain of it on appeal.” *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995).

In addition, an appellate court “need not entertain arguments that are patently inconsistent with the positions advanced at trial.” *Almquist v. Finley Sch. Dist. No. 53*, 114 Wn. App. 395, 403, 57 P.3d 1191 (2002), *review denied* 75 P.3d 968 (2003).

3. The trial court did not err by dismissing this case in accordance with its uncontroverted order.

Peter also assigns error to Judge Serko’s order of June 2, 2006, in which the court dismissed the action. Br. of Appellant at 1.

The court’s September 15, 2004 order staying the Washington case stated that it was subject to appeal: “Pending definitive rulings in Japan either accepting jurisdiction or rejecting jurisdiction this matter shall be stayed . . . , *subject to right of appeal.*” CP 150 (emphasis added).

Peter did not contest this order or the October 22, 2005 order reaffirming the stay.

Peter again took inconsistent positions with regard to dismissal of the Washington action. First, declaring that he and Etsuko “have nearly every conceivable contact with [Washington] which we have maintained throughout the marriage,” he opposed Etsuko’s motion to dismiss in August 2004. CP 67.

A year later, when Peter had filed an action in Virginia, his counsel’s declaration presents a very different approach: “Although Mr. Toland once had many contacts and connections with Washington State, most of these have now shifted to Virginia.” CP 348. Peter himself moved to dismiss the Washington action, arguing that neither party wished to have the divorce finalized there. CP 381.

But when the Virginia action had been dismissed, Peter again opposed Etsuko’s motion to dismiss and moved the court to lift the stay in Washington. CP 155.

Entry of the final decree of dissolution in Japan squarely met the condition set out in the trial court’s earlier order: “If the Court in Japan rules it has jurisdiction over the marriage, the parties and their property, the action in Japan shall proceed and upon final decree in Japan this matter shall be dismissed[.]” CP 150.

Judge Susan Serko opined that entry of the decree “triggers dismissal of the Washington action per the September 15, 2004, Order of Judge Cohoe.” CP 327.

The trial court did not err by dismissing this case based on the plain language of its uncontroverted order.

4. The appellate court should not decide jurisdictional issues that were not ruled on by the trial court.

Peter invites this Court to establish that Washington has jurisdiction over Etsuko and has jurisdiction to enter a parenting plan under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Br. of Appellant at 27-31.

Peter made no mention of a parenting plan under the UCCJEA in his motion to revise the commissioner’s ruling below: “Whether the court has jurisdiction to resolve issues of the child, I think that might have to be resolved at another time.” RP (Sept. 10, 2004) at 9. And he did not contest the trial court’s subsequent order, which states: “The Court is making no ruling concerning jurisdiction over Mrs. Toland, the minor child or their property” CP 150.

“The appellate court may refuse to review any claim of error which was not raised in the trial court.” RAP 2.5(a). “Failure to raise an issue before the trial court generally precludes a party from raising it on appeal.” *Smith v. Shannon*, 100 Wn.2d 26, 37, 666

P.2d 351 (1983). Peter offers no reason to depart from the general rule.

This Court should not decide jurisdictional issues that were not considered or ruled on by the trial court.

5. This Court should not dignify Peter's collateral attacks on the final decree of dissolution and the Tokyo Family Court.

Peter argues at length that Japan did not have subject-matter jurisdiction over the parties' marriage and that Peter did not submit to the jurisdiction of the Japanese court. Br. of Appellant at 18-26.

He began to disparage the Japanese court after incorrectly asserting that dismissal of the Washington action would compel the Washington court to recognize and enforce the decree. RP (May 5, 2006) at 7-8. Peter's counsel argued that the proceeding in Japan was "a farce" and "was essentially of no value." *Id.* at 8. On appeal, he attempts to recast the dissolution action as an international child abduction case. Br. of Appellant at 31-35.

Peter offers no support for the proposition that Washington's appellate courts have the authority to reverse final judgments issued by foreign courts. The remedy for his dissatisfaction with the decree granted by the Tokyo Family Court was to seek review of the matter *in Japan*.

Peter did not appeal entry of the final decree in Japan, and the Japanese court's jurisdiction over Peter and the parties' marriage is outside the proper scope of review here.

6. Etsuko is entitled to fees and costs on appeal.

Under RAP 18.1, Etsuko requests the award of attorney fees and costs on appeal: "Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees on appeal in addition to statutory costs." RCW 26.09.140.

In the alternative, Etsuko should be awarded attorney fees under RCW 4.84.185 and RAP 18.9 on the ground that this appeal was advanced without reasonable cause. "The frivolous lawsuit statute, RCW 4.84.185, was enacted to discourage abuse of the legal system by providing for an award of expenses and legal fees to any party forced to defend itself against meritless claims asserted for harassment, delay, nuisance or spite." *Suarez v. Newquist*, 70 Wn. App. 827, 832-33, 855 P.2d 1200 (1993).

In sum, Peter's forum-shopping has clogged the dockets of several courts.

Peter has withheld child support. He has not given Etsuko her portion of the parties' assets. And he has compelled his ex-wife to defend herself in three far-flung jurisdictions.

Instead of promptly challenging the stay of proceedings ordered by the Washington court, he awaited the outcome in Japan. When he was dissatisfied with the Tokyo Family Court's final decision, he did not appeal it. Instead, he moved forward in Washington and filed an additional action in Virginia. He has abused the courts' procedures in order to unreasonably prolong litigation in this matter.

He now asks this Court to apply state, federal, and international law to adjudicate issues not ruled on by the trial court. Without providing authority, he urges this Court to disregard the final decree, substituting its own judgment for that of the Japanese court.

Washington courts have not been called on to interpret or to enforce the decree. Peter's discussions of the 1980 Hague Convention, dispute resolution in *Chotei* (Japanese family court mediation), the Status of Forces Agreement between the United States and Japan,¹⁶ and the escape clause of the Uniform Child Custody Jurisdiction and Enforcement Act are simply distractions from the straightforward issues before the Court.

¹⁶ Peter's counsel, Jeffrey Renshaw, represented to the trial court that Peter is not subject to the civil laws of Japan under the Status of Forces Agreement (SOFA). RP (May 5, 2006) at 9. But, in pertinent part, the agreement actually provides as follows: "The United States shall not claim immunity from the jurisdiction of the courts of Japan for members or employees of the United States armed forces in respect of the civil jurisdiction of the courts of Japan." CP 364.


The trial court neither abused its discretion by staying its proceedings nor erred by dismissing this case in accordance with its uncontroverted order.

E. CONCLUSION


This Court should affirm the dismissal in all respects and should award costs and reasonable attorney fees on appeal to Etsuko Toland.

DATED this 16th day of February, 2007.

Respectfully submitted,



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Appendix

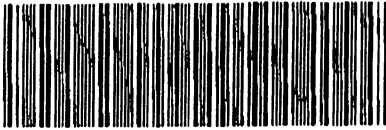
PROCEDURAL CHRONOLOGY

Date	Event	Record
7/13/03	Peter and Etsuko separate	CP 1
9/29/03	Peter files petition for dissolution in Pierce County Superior Court	A-2
11/06/03	Etsuko seeks mediation to attempt reconciliation in Tokyo Family Court	CP 40

2/24/04	Mediation to attempt reconciliation fails	CP 40
4/01/04	Etsuko files petition for dissolution in Tokyo Family Court	CP 34
5/10/04	Peter files amended petition in Washington	CP 1
6/07/04	Peter serves amended petition on Etsuko	A-52
7/09/04	Etsuko moves to dismiss Washington action	CP 10
7/12/04	Mediation sought by Peter finalized in Tokyo Family Court to determine child custody and visitation	CP 115
7/21/04	Peter leaves Japan for Washington, D.C.	CP 67
8/24/04	Commissioner Heslop dismisses Washington action for lack of jurisdiction	CP 124
9/01/04	Peter moves to revise commissioner's ruling	CP 128
9/15/04	Judge Cohoe vacates dismissal order and stays Washington proceeding	CP 149

6/14/05	Peter files divorce action in Virginia	CP 347
9/20/05	Peter moves to dismiss Washington action	CP 380
9/29/05	Tokyo Family Court issues decree dissolving marriage	CP 216
10/20/05	Virginia action dismissed	CP 347
10/21/05	Judge Cohoe reaffirms order staying Washington proceeding	CP 396

2/24/06	Peter moves to lift stay in Washington	CP 155
5/22/06	Etsuko moves to dismiss Washington action	CP 328
6/02/06	Judge Serko dismisses Washington action	CP 335
6/29/06	Peter appeals dismissal to Court of Appeals	CP 337



03-3-03026-0 18733135 PTDSS 09-30-03

**ERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

**FILED
IN COUNTY CLERK'S OFFICE**

In re the Marriage of:

PETER PAUL TOLAND

NO.

SEP 29 2003 P.M.
03 3 03026-0
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
DEPUTY

**PETITION FOR DISSOLUTION
OF MARRIAGE
(PTDSS)**

Petitioner,

and

ETSUKO FUTAGI TOLAND

Respondent.

**FILED
IN COUNTY CLERK'S OFFICE**

SEP 29 2003 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
DEPUTY

I. BASIS

1.1 IDENTIFICATION OF PETITIONER.

Name: Peter Toland, Birth date 6/15/67

Last known residence Megishi US Military HOuseing, Yokohama, Japan

1.2 IDENTIFICATION OF RESPONDENT.

Name Etsuko Futagi Toland, Birth date 9/27/71

Last known residence 2-15-19-102 Honkomagome, Bunkyo-ku, Tokyo, Japan 113-0021

1.3 CHILDREN OF THE MARRIAGE DEPENDENT UPON EITHER OR BOTH SPOUSES.

The husband and wife are both the parents of the following dependent children:

Name (first/last) Erika Toland Age 1

1.4 ALLEGATION REGARDING MARRIAGE.

This marriage is irretrievably broken.

1.5 DATE AND PLACE OF MARRIAGE.

The parties were married on 3/22/95 at Tokyo, Japan.

1.6 SEPARATION.

Husband and wife separated on 7/13/03

PET FOR DISSO OF MARRIAGE (PTDSS) - Page 1 of 4
WPF DR 01.0100 (7/2003) - RCW 26.09.020

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1.7 JURISDICTION.

This court has jurisdiction over the marriage.

This court has jurisdiction over the respondent because:

Both parties are U.S. Citizens. The child of the marriage is a U.S. citizen. Petitioner is a member of the armed forces in Japan. The last residence of the parties moving to Japan was Washington. Both parties have sufficient contacts with Washington state to establish jurisdiction.

1.8 PROPERTY.

There is community or separate property owned by the parties. The court should make a fair and equitable division of all the property.

The petitioner's recommendation for the division of property is set forth below.

The petitioner should be awarded the parties' interest in the following property: See exhibit A.

The respondent should be awarded the parties' interest in the following property: See exhibit B.

1.9 DEBTS AND LIABILITIES.

The parties have debts and liabilities. The court should make a fair and equitable division of all debts and liabilities.

The parties have no debts or liabilities.

1.10 SPOUSAL MAINTENANCE.

Spousal maintenance should not be ordered.

1.11 CONTINUING RESTRAINING ORDER.

Does not apply.

1.12 PREGNANCY.

The wife is not pregnant.

1.13 JURISDICTION OVER THE CHILDREN.

This court has jurisdiction over the child for the reasons set forth below.

This state is the home state of the child because The child and the parents or the child and at least one parent or person acting as a parent, have significant connection with the state other than mere physical presence; and substantial evidence is available in this state concerning the child's care, protection, training and personal relationships and the child has no home state elsewhere.

No other state has jurisdiction.

Other:

All parties are US citizens including the child. The father is stationed with the military in Japan but is a resident of Washington State.

1.14 CHILD SUPPORT AND PARENTING PLAN FOR DEPENDENT CHILDREN.

Support for the dependent child listed below, should be set pursuant to the Washington State Child Support Schedule.

Name of Child	Mother's Name	Father's Name
Erika	Etsuko Toland	Peter Toland

The petitioner's proposed parenting plan for the child listed above is attached and is incorporated by reference as part of this Petition.

(The following information is required only for the child who is included in the petitioner's proposed parenting plan.)

During the last five years, the child has lived in the following places with the following persons (list each place the child lived, including the State of Washington, the dates the child lived there and the names of the persons with whom the child lived. The present addresses of those persons must be listed in the required Confidential Information Form):

1) From October 17, 2002 to July 13, 2003, the child lived in Negishi U.S. Military Family Housing Yokohama, Japa, child lived with both parties.

2) From July 13, 2003 to present with the respondent mother and Akikio Futagi, the child's maternal grandmother.

Claims to custody or visitation:

A-5

EXHIBIT A**Property that should be awarded to Peter Paul Toland Jr.**

PROPERTY	APPROXIMATE VALUE
Peter Paul Toland Jr.'s Roth IRA accounts	\$10,000
Erika Toland's Coverdale Education IRA	\$3,500
Peter Paul Toland Jr.'s Bank Account	\$90,000
Joint Money Market Account	\$3,000
Joint Mutual Funds	\$5,000
Joint Stocks	\$30,000
Used Automobile	\$500
TOTAL	\$142,000

Household items currently held at Petitioner's (Peter Paul Toland Jr.) residence at 553-B Negishi Heights, Negishi Military Housing area, Yokohama, Japan, will go to Peter Paul Toland Jr. Household items currently at respondent's (Etsuko Futagi Toland) residence at 2-15-19-102 Hokomagome, Bunkyo-ku, Tokyo, Japan will go to Etsuko Futagi Toland.

Petitioner's military retirement in entirety should be awarded to Petitioner.

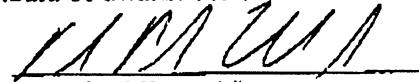

Peter Paul Toland Jr.

EXHIBIT B**Property that should be awarded to Etsuko Futagi Toland**

PROPERTY	APPROXIMATE VALUE
Etsuko Futagi Toland's Roth IRA accounts	\$10,000
Etsuko Futagi Toland's Japanese Bank Accounts	\$40,000
Etsuko Futagi Toland's U.S. Bank Account	\$28,000
Peter Paul Toland Jr.'s U.S. Bank Account	\$17,000
Joint Money Market Account	\$4,000
Joint Mutual Funds	\$5,000
Joint Stocks	\$31,000
TOTAL	\$135,000

Household items currently held at Petitioner's (Peter Paul Toland Jr.) residence at 553-B Negishi Heights, Negishi Military Housing area, Yokohama, Japan, will go to Peter Paul Toland Jr. Household items currently at respondent's (Etsuko Futagi Toland) residence at 2-15-19-102 Hokomagome, Bunkyo-ku, Tokyo, Japan will go to Etsuko Futagi Toland.


Peter Paul Toland Jr.

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 29 2003 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

03-3-03026-0 19733138 PPP 09-30-03

SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

In re the Marriage of:

NO. 03 3 03026 0

PETER PAUL TOLAND

PARENTING PLAN
PROPOSED (PPP)

Petitioner,

and

ETSUKO FUTAGI TOLAND

Respondent.

This parenting plan is proposed by Petitioner.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following child:

Name	Age
Erika Toland	1

II. BASIS FOR RESTRICTIONS

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child and the right to make decisions for the child.

2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

Does not apply.

2.2 OTHER FACTORS (RCW 26.09.191(3)).

Does not apply.

PARENTING PLAN (PPP, PPT, PP) Page 1 of 7
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194LAW OFFICE OF ERIK BJORNSON
1008 S. Yakima Suite 202
Tacoma, WA 98405
(253) 272-1434

ORIGINAL

III. RESIDENTIAL SCHEDULE

The residential schedule must set forth where the child shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE.

Prior to enrollment in school, the child shall reside with the father, except for the following days and times when the child will reside with or be with the other parent:

From Friday 6:00 p.m. to Sunday 6:00 p.m. every other week

3.2 SCHOOL SCHEDULE.

Upon enrollment in school, the child shall reside with the except for the following days and times when the child will reside with or be with the other parent:

3.3 SCHEDULE FOR WINTER VACATION.

The child shall reside with the father during winter vacation, except for the following days and times when the child will reside with or be with the other parent:

The child shall be with the mother in odd years.

3.4 SCHEDULE FOR OTHER SCHOOL BREAKS.

The child shall reside with the father during other school breaks, except for the following days and times when the child will reside with or be with the other parent:

The child shall be with the mother during even years.

3.5 SUMMER SCHEDULE.

Upon completion of the school year, the child shall reside with the except for the following days and times when the child will reside with or be with the other parent:

Same as school year schedule.

3.6 VACATION WITH PARENTS.

Does not apply.

3.7 SCHEDULE FOR HOLIDAYS.

PARENTING PLAN (PPP, PPT, PP) Page 2 of 7
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194

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The residential schedule for the child for the holidays listed below is as follows:

	With Mother	With father
New Years Day	Every	Never
Martin Luther King's Day	Odd	Even
President's Day	Even	Odd
Memorial Day	Odd	Even
July 4th	Even	Odd
Labor Day	Odd	Even
Veterans' Day	Even	Odd
Thanksgiving Day	Odd	Even
Christmas Eve	Even	Odd
Christmas Day	Odd	Even

[X] Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

	With mother	With Father
Mothers' Birthday	Every	Never
Father's Birthday	Never	Every
Child's Birthday	Even	Odd

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

Does not apply.

3.10 RESTRICTIONS.

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

3.11 TRANSPORTATION ARRANGEMENTS.

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child between parents shall be as follows:

The parties shall cooperate with each other to arrange visitation and split the cost equally.

3.12 DESIGNATION OF CUSTODIAN.

The child named in this parenting plan are scheduled to reside the majority of the time

PARENTING PLAN (PPP, PPT, PP) Page 3 of 7
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194

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with the father. This parent is designated the custodian of the child solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 OTHER.

3.14 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION OF A CHILD.

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting

Plan/Residential Schedule). The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

IV. DECISION MAKING

4.1 DAY-TO-DAY DECISIONS.

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

4.2 MAJOR DECISIONS.

Major decisions regarding each child shall be made as follows:

Education decisions: joint

Non-emergency health care: joint

Religious upbringing: joint

4.3 RESTRICTIONS IN DECISION MAKING.

Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

V. DISPUTE RESOLUTION

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must, be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

mediation by Pierce County for Dispute Resolution, or

1 The cost of this process shall be allocated between the parties as follows:

2 50% mother 50% father.

3 The counseling, mediation or arbitration process shall be commenced by notifying the
4 other party by

5 In the dispute resolution process:


- 6 (a) Preference shall be given to carrying out this Parenting Plan.
- 7 (b) Unless an emergency exists, the parents shall use the designated process to
8 resolve disputes relating to implementation of the plan, except those related to
9 financial support.
- 10 (c) A written record shall be prepared of any agreement reached in counseling or
11 mediation and of each arbitration award and shall be provided to each party.
- 12 (d) If the court finds that a parent has used or frustrated the dispute resolution
13 process without good reason, the court shall award attorneys' fees and financial
14 sanctions to the other parent.
- 15 (e) The parties have the right of review from the dispute resolution process to the
16 superior court.

14 VI. OTHER PROVISIONS

15 There are no other provisions.

16 VII. DECLARATION FOR PROPOSED PARENTING PLAN

17 (Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under
18 the laws of the State of Washington that this plan has been proposed in good faith and
19 that the statements in Part II of this Plan are true and correct.

20 
21 Peter Toland PETER PAUL TOLAND JR.
22 Father

9/24/03, YAKOSUKA NAVY BASE
Date and Place of YOKOSUKA, JAPAN
Signature

23 VIII. ORDER BY THE COURT

24 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and
25 approved as an order of this court.

PARENTING PLAN (PPP, PPT, PP) Page 6 of 7
WPF DR 01.0400 (7/2003) • RCW 26.09.181; .187; .184

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Tacoma, WA 98405
(253) 272-1434

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.040.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: _____

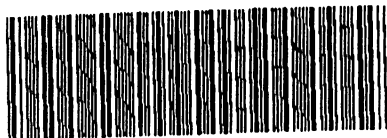
Judge/Commissioner

Presented by: _____

Approved for entry: _____

Erik Bjornson
W.S.B.A. #25204
Attorney for Petitioner

W.S.B.A. #
Attorney for Respondent



03-3-03026-0 19733140 CSW 09-30-03

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 29 2003

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY 

Washington State Child Support Schedule Worksheets (CSW)

Mother: Etsuko Futagi Toland

Father: Peter Paul Toland

County: PIERCE

Superior Court Number:

03 3 03026 0

Children and Ages: Erika, 0

Part I: Basic Child Support Obligation (See Instructions, Page 5)

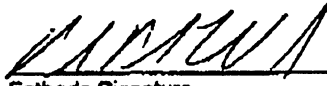
1. Gross Monthly Income	Father	Mother
a. Wages and Salaries	\$5,201.00	\$4,166.00
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Spousal Maintenance Received	-	-
e. Other Income	\$1,446.64	-
f. Total Gross Monthly Income (add lines 1a through 1e)	\$6,647.64	\$4,166.00
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State)	\$787.30	-
b. FICA (Soc.Sec.+Medicare)/Self-Employment Taxes	\$397.88	-
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	-	-
e. Pension Plan Payments	-	-
f. Spousal Maintenance Paid	-	-
g. Normal Business Expenses	-	-
h. Total Deductions from Gross Income (add lines 2a through 2g)	\$1,185.18	-
3. Monthly Net Income (line 1f minus 2h)	\$5,462.46	\$4,166.00
4. Combined Monthly Net Income (Line 3 amounts combined) (If line 4 is less than \$600, skip to line 7.)		\$9,628.46
5. BASIC CHILD SUPPORT OBLIGATION: Combined → Erika \$986.00 - - -		\$986.00

ORIGINAL

	Father	Mother
6. Proportional Share of Income (Each parent's net income from line 3 divided by line 4)	.567	.433
7. Each Parent's Basic Child Support Obligation (Multiply each number on line 6 by line 5) (If line 4 is less than \$600, enter each parent's support obligation of \$25 per child. Number of children: 1 (Skip to line 15a and enter this amount.)	\$559.06	\$426.94
Part II: Health Care, Day Care, and Special Child Rearing Expenses (See Instructions, Page 7)		
8. Health Care Expenses		
a. Children's Monthly Health Insurance	-	-
b. Children's Uninsured Monthly Health Care	-	-
c. Total Monthly Health Care Expenses (line 8a plus line 8b)	-	-
d. Combined Monthly Health Care Expenses (add father's and mother's totals from line 8c)		-
e. Maximum Ordinary Monthly Health Care (multiply line 5 times .05)		\$49.30
f. Extraordinary Monthly Health Care Expenses (line 8d minus line 8e., if "0" or negative, enter "0")		-
9. Day Care and Special Child Rearing Expenses		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)		
	-	-
	-	-
	-	-
e. Total Day Care and Special Expenses (Add lines 9a through 9d)	-	-
10. Combined Monthly Total Day Care and Special Expenses (Combine amounts on line 9e)		-
11. Total Extraordinary Health Care, Day Care, and Special Expenses (line 8f plus line 10)		-
12. Each Parent's Obligation for Extraordinary Health Care, Day Care, and Special Expenses (Multiply each number on line 6 by line 11)	-	-
Part III: Gross Child Support Obligation		
13. Gross Child Support Obligation (line 7 plus line 12)	\$559.06	\$426.94
Part IV: Child Support Credits (See Instructions, Page 7)		
14. Child Support Credits		
a. Monthly Health Care Expenses Credit	-	-
b. Day Care and Special Expenses Credit	-	-
c. Other Ordinary Expenses Credit (describe)	-	-
	-	-
d. Total Support Credits (add lines 14a through 14c)	-	-

Part V: Standard Calculation/Presumptive Transfer Payment (See Instructions, Page 8)		
15. Standard Calculation	Father	Mother
a. Amount from line 7 if line 4 is below \$600. Skip to Part VI.	-	-
b. Line 13 minus line 14d, if line 4 is over \$600 (see below if appl.)	\$559.06	\$426.94
Limitation standards adjustments		
c. Amount on line 15b adjusted to meet 45% net income limitation	-	-
d. Amount on line 15b adjusted to meet need standard limitation	-	-
e. Enter the lowest amount of lines 15b, 15c or 15d:	\$559.06	\$426.94
Part VI: Additional Factors for Consideration (See Instructions, Page 8)		
16. Household Assets (Present estimated value of all major assets.)	Father's Household	Mother's Household
a. Real Estate	-	-
b. Stocks and Bonds	\$47,500.00	-
c. Vehicles	-	-
d. Boats	-	-
e. Pensions/IRAs/Bank Accounts	-	-
f. Cash	\$200.00	-
g. Insurance Plans	-	-
h. Other:	-	-
	-	-
	-	-
17. Household Debt (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
18. Other Household Income		
a. Income Of Current Spouse (if not the other parent of this action)		
Name	-	-
Name	-	-
b. Income of Other Adults in Household		
Name	-	-
Name	-	-
c. Income of Children (if considered extraordinary)		
Name	-	-
Name	-	-
d. Income from Child Support		
Name	-	-
Name	-	-

Other Household Income (continued)	Father's Household	Mother's Household
e. Income From Assistance Programs		
Program	-	-
Program	-	-
f. Other Income (describe)		
	-	-
	-	-
19. Non-Recurring Income (describe)		
	-	-
	-	-
20. Child Support Paid For Other Children		
Name/age:	-	-
Name/age:	-	-
21. Other Children Living In Each Household (First names and ages)		
22. Other Factors For Consideration		

Other factors for consideration (continued)			
Signature and Dates			
I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.			
Mother's Signature _____		Father's Signature  _____	
Date _____ City _____		Date <u>26 SEP 03</u> City <u>YOKOSUKA, JAPAN</u>	

Judge/Reviewing Officer _____

Date _____

Worksheet certified by the State of Washington Administrator for the Courts.
Photocopying of the worksheet is permitted.



03-3-03026-0 19733141 FNDCLR 09-30-03

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP 29 2003 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK County Clerk
BY _____ DEPUTYSUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

In re: Marriage of

PETER PAUL TOLAND

NO. 03 3 03026 0

Petitioner,

FINANCIAL DECLARATION

And

☒ PETITIONER

ETSUKO FUTAGI TOLAND

☐ RESPONDENT

Respondent.

(FNDCLR)

Name: Peter Paul Toland

Date of Birth: 6/15/67

I. SUMMARY OF BASIC INFORMATION

Declarant's Total Monthly Net Income (from § 3.3 below)	\$5,462.46
Declarant's Total Monthly Household Expenses (from § 5.9 below)	\$1,515.00
Declarant's Total Monthly Debt Expenses (from § 5.11 below)	-
Declarant's Total Monthly Expenses (from § 5.12 below)	\$1,515.00
Estimate of the other party's gross monthly income (from § 3.1g below)	<input checked="" type="checkbox"/> \$4,166.00
	<input type="checkbox"/> Unknown

II. PERSONAL INFORMATION

2.1 Occupation: US Navy

2.2 The highest year of education completed: 18

2.3 Are you presently employed? ☒ Yes ☐ No

a. If yes: (1) Where do you work. Employer's name and address must be listed on the Confidential Information Form.

(2) When did you start work there? (month/year) 1989

b. If no: 1. When did you last work? (month/year)

2. What were your gross monthly earnings? -

(3) Why are you presently unemployed?

FINANCIAL DECLARATION (FNDCLR - Page 1 of 6)
WPF DR 01.0550 (9/2001) - RCW 26.18.220 (1)

LAW OFFICE OF ERIK BJORNSON

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Tacoma, WA 98405
(253) 272-1434

ORIGINAL

III. INCOME INFORMATION

If child support is at issue, complete the Washington State Child Support Worksheet(s), skip Paragraphs 3.1 and 3.2. If maintenance, fees, costs or debts are at issue and child support is NOT an issue this entire section should be completed. (Estimate of other party's income information is optional.)

3.1 GROSS MONTHLY INCOME.

If you are paid on a weekly basis, multiply your weekly gross pay by 4.3 to determine your monthly wages and salaries. If you are paid every two weeks, multiply your gross pay by 2.15. If you are paid twice monthly, multiply your gross pay by 2. If you are paid once a month, list that amount below.

	<u>Petitioner</u>	<u>Respondent</u>
a. Imputed Income	-	-
b. Wages and Salaries	\$5,201.00	\$4,166.00
c. Interest and Dividend Income	-	-
d. Business Income	-	-
e. Spousal Maintenance From Other Relationships	-	-
f. Other Income	\$1,446.64	-
g. Total Gross Monthly Income (add lines 3.1a through 3.1e)	\$6,647.64	\$4,166.00
h. Actual Gross Income (Year-to-date)	-	-

3.2 MONTHLY DEDUCTIONS FROM GROSS INCOME.

	<u>Petitioner</u>	<u>Respondent</u>
a. Income Taxes	\$787.30	-
b. FICA/Self-employment Taxes	\$397.88	-
c. State Industrial Insurance Deductions	-	-
d. MANDATORY Union/Professional Dues	-	-
e. Pension Plan Payments	-	-
f. Spousal Maintenance Paid	-	-
g. Normal Business Expenses	-	-
h. Total Deductions from Gross Income (add lines 3.2a through 3.2g)	\$1,185.18	-

3.3 MONTHLY NET INCOME. (Line 3.1f minus line 3.2h or line 3 from the Child Support Worksheet(s).)

\$5,462.46	\$4,166.00
-------------------	-------------------

3.4 MISCELLANEOUS INCOME.

PetitionerRespondent

a. Child support received from other relationships

Name:

-

-

Name:

-

-

b. Other miscellaneous income (list source and amounts)

Income of current spouse

Name:

-

-

Name:

-

-

Income of children

Name:

-

-

Name:

-

-

Income from assistance programs

Name:

-

-

Name:

-

-

Non-recurring income

Name:

-

-

Name:

-

-

Other Income:

-

-

c. **Total Miscellaneous Income** (add lines 3.4a through 3.4b)

-

-

3.5 Income of Other Adults in Household

Name:

-

-

Name:

-

-

3.6 If the income of either party is disputed, state monthly income you believe is correct and explain below:

IV. AVAILABLE ASSETS

4.1	Cash on hand	\$200.00
4.2	On deposit in banks	\$27,000.00
4.3	Stocks and bonds	\$47,500.00
	Cash value of life insurance	-
4.4	Other liquid assets:	-

V. MONTHLY EXPENSE INFORMATION

Monthly expenses for myself and 1 dependents are: (Expenses should be calculated for the future, after separation, based on the anticipated residential schedule for the children.)

5.1 HOUSING.

Rent, 1st mortgage or contract payments

-

Installment payments for other mortgages or encumbrances

-

Taxes & insurance (if not in monthly payment)

-

Total Housing

-

FINANCIAL DECLARATION (FNDCLR - Page 3 of 6)
WPF DR 01.0550 (9/2001) - RCW 26.18.220 (1)

LAW OFFICE OF ERIK BJORNSON

1008 S. Yakima Suite 202
Tacoma, WA 98405
(253) 272-1434

1	5.2 UTILITIES.	
2	Heat (gas & oil)	-
3	Electricity	-
4	Water, sewer, garbage	-
5	Telephone	\$45.00
6	Cable	\$45.00
7	Other:	-
8	Total Utilities	\$90.00
9	5.3 FOOD AND SUPPLIES	
10	Food for 2 persons	\$200.00
11	Supplies (paper, tobacco, pets)	\$40.00
12	Meals eaten out	\$200.00
13	Other:	-
14	Total Food Supplies	\$440.00
15	5.4 CHILDREN.	
16	Day Care/Babysitting	\$550.00
17	Clothing	\$50.00
18	Tuition (if any)	-
19	Other child related expenses	\$75.00
20	Total Expenses Children	\$675.00
21	5.5 TRANSPORTATION.	
22	Vehicle payments or leases	-
23	Vehicle insurance & license	\$50.00
24	Vehicle gas, oil, ordinary maintenance	\$60.00
25	Parking	-
26	Other transportation expenses	-
27	Total Transportation	\$110.00
28	5.6 HEALTH CARE. (Omit if fully covered)	
29	Insurance	-
30	Uninsured dental, orthodontic, medical, eye	-
31	care expenses	-
32	Other uninsured health expenses	-
33	Total Health Care	-
34	5.7 PERSONAL EXPENSES (Not including children).	
35	Clothing	\$75.00
36	Hair care/personal care expenses	\$45.00
37	Clubs and recreation	\$30.00
38	Education	-
39	Books, newspapers, magazines, photos	\$25.00
40	Gifts	\$25.00
41	Other:	-
42	Total Personal Expenses	\$200.00

FINANCIAL DECLARATION (FNDCLR - Page 4 of 6)
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LAW OFFICE OF ERIK BJORNSON

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Tacoma, WA 98405
(253) 272-1434

5.8 MISCELLANEOUS EXPENSES

Life insurance (if not deducted from income)

-

Other:

-

Other:

-

Total Miscellaneous Expenses

-

5.9 TOTAL HOUSEHOLD EXPENSES

\$1,515.00

(The total of Paragraphs 5.1 through 5.8)

5.10 INSTALLMENT DEBTS INCLUDED IN PARAGRAPHS 5.1 THROUGH 5.8.

Creditor/Description of DebtBalanceMonth of Last Payment

-

-

-

-

-

-

-

-

-

-

5.11 OTHER DEBTS AND MONTHLY EXPENSES NOT INCLUDED IN PARAGRAPHS 5.1 - 5.8

Creditor/Description of DebtBalanceMonth of
Last PaymentAmount of
Monthly Payment

-

-

-

-

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FINANCIAL DECLARATION (FNDCLR - Page 5 of 6)
WPF DR 01.0550 (9/2001) - RCW 26.18.220 (1)

LAW OFFICE OF ERIK BJORNSON

1008 S. Yakima Suite 202

Tacoma, WA 98405

(253) 272-1434

1 Total Monthly Payments for Other Debts and Monthly
2 Expenses

3 TOTAL EXPENSES (Add Paragraphs 5.9 and 6.11)

\$1,515.00

4 VI. ATTORNEY FEES

5 6.1 Amount paid for attorney fees and costs to date:

6 6.2 The source of this money was:

7 6.3 Fees and costs incurred to date:

8 6.4 Arrangements for attorney fees and costs are:

9 6.5 Other:

10 I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

11 Signed at YOKOSUKA NAVY BASE, YOKOSUKA, JAPAN on 26 SEP 03
12 (Place) (Date)

13 Peter Paul Toland Jr.
14 Declarant/Petitioner

15 The following financial records are being provided to the other party and filed separately with the court:

16 Financial records pertaining to myself:

17 ☒ Individual ☐ Partnership or Corporate Income Tax returns for
the years: including all W-2s and schedules;

18 ☒ Pay stubs for the dates of 3/03 - 8/03.

19 ☐ Other:

20 DO NOT ATTACH THESE FINANCIAL RECORDS TO THE FINANCIAL DECLARATION. THESE
21 FINANCIAL RECORDS SHOULD BE SERVED ON THE OTHER PARTY AND FILED WITH THE
22 COURT SEPARATELY USING THE SEALED FINANCIAL SOURCE DOCUMENTS COVER SHEET
(WPF DRPSCU 08.0220). IF FILED SEPARATELY USING THE COVER SHEET, THE RECORDS WILL
23 BE SEALED TO PROTECT YOUR PRIVACY (ALTHOUGH THEY WILL BE AVAILABLE TO THE
24 OTHER PARTIES IN THE CASE, THEIR ATTORNEYS, AND CERTAIN OTHER INTERESTED
25 PERSONS. SEE GR 22 (C)(2)).

FINANCIAL DECLARATION (FNDCLR - Page 6 of 6)
WPF DR 01.0550 (9/2001) - RCW 26.18.220 (1)

LAW OFFICE OF ERIK BJORNSON
1008 S. Yakima Suite 202
Tacoma, WA 98405
(253) 272-1434

SupportCase/FD 2003 Y

PETITION FOR DIVORCE

April 1, 2004

To Tokyo Family Court

Petitioner's Attorneys: Ginjiro Suzuki (personal seal)
Nao Tsuchiya (personal seal)

(Permanent Residence) 1-15 Shimoochiai, Shinjuku-ku, Tokyo
(Current Address) 2-15-19 Honkomagome, Bunkyo-ku, Tokyo 113-0021
Petitioner: Etsuko Toland

Attorney's Information:

Address: Kojimachi NK Bldg. 5F, 2-14-2 Kojimachi,
Chiyoda-ku, Tokyo 102-0083
Name of Firm: Hayabusa Kokusai Law Offices
Petitioner's Attorneys: Ginjiro Suzuki
Nao Tsuchiya
TEL: 03-3264-0671
FAX: 03-3264-2240

(Nationality) U.S. Citizen
(Current Address) Negishi Heights 553-B, Terakubo, Naka-ku, Yokohama, Kanagawa
(Mailing Address) PSC 475 Box1649, FPO, AP 96350-1649 US Naval Hospital
(US Naval Dental Center Far East, 1 Tomari-cho, Yokosuka-shi,
Kanagawa, 238-0001)
Respondent: Peter Paul Toland Jr.

Petition for Dissolution of Marriage

Value of Subject Matter: Dissolution of Marriage (distribution of property) JPY8,646,932

Damages claim: JPY3,000,000

Cost of Revenue Stamp: JPY22,400

PURPOSES OF PETITION

1. To dissolve the marriage between the Petitioner and the Respondent.
2. To award the full custody of their daughter, Erika (female, born on October 17, 2002) to the Petitioner.
3. The Respondent to pay child support of US\$1,080 to the Petitioner until Erika reaches adulthood.
4. The Respondent to pay JPY8,646,932 to the Petitioner.
5. The Respondent to pay the Petitioner JPY3,000,000 and annual interest thereon at 5% from the date this petition is filed until the date payment is made.
6. Legal expenses to be billed to the Respondent.
7. A Court ruling allowing provisional execution of item 5, above.

GROUND'S OF PETITION**1. Parties Involved**

- 1) The Petitioner is a Japanese citizen who was born on September 27, 1971, in Shinjuku-ku, Tokyo. She currently holds a full-time job in Tokyo.

The Respondent is a U.S. citizen who was born on June 15, 1967. He is a U.S. Military personnel working at the U.S. Navy Dental Center, Far East, in Yokosuka City, Kanagawa Prefecture.

The Petitioner and the Respondent were married on March 22, 1995, and they have a daughter, Erika, who was born on October 17, 2002.

- 2) The Petitioner and the Respondent lived separately from May 1995 to January 1996 due to Respondent's attendance to a graduate school in Texas, U.S. The Petitioner stayed behind in Japan during this period.

From February 1996 to June 1996, the Petitioner and the Respondent lived together in Texas, U.S., and then moved to Washington State because the Respondent received an order to transfer to his next duty station.

The Respondent was assigned to transfer to the Yokosuka Base in Kanagawa, Japan from July 1999, so the family relocated to live in Yokohama City, Kanagawa. However, the relationship between the Petitioner and the Respondent became troubled after the Petitioner gave birth to her daughter in 2002. The Petitioner left her home with her daughter in July 2003, and the Respondent and the Petitioner continue to live separately.

2. Causes and Facts of Petition regarding the Grounds of Petition 1.

1) Registration of Marriage

The Petitioner and the Respondent registered their marriage on March 22, 1995 (See Evidence 1).

2) Causes and Reasons for Divorce

(1) Cause of Divorce #1

A. The Petitioner and the Respondent had an ordinary married life after their marriage in 1995, however, the Respondent's behavior became rude and brutal to the Petitioner and her mother following the birth of their daughter, Erika, in 2002. He did not modify his terrible behavior at all even when the Petitioner was holding Erika in her arms. This behavior became more pronounced when the Respondent was dissatisfied with something. He raised his voice right into the Petitioner's face and carried on his complaints/protests regardless of the situation. Further, the Respondent would continue to shout at the Petitioner so she could not make any counterargument to him. The Respondent maintained such behavior with the intention of making the Petitioner obey his demands. Although his behavior did not involve actual physical violence, the Respondent's behavior is considered to constitute violent acts (See Evidence 3). This violent behavior worsened and was carried out on a daily basis, which drove the Petitioner to suffer from severe emotional distress. The Respondent's behavior was violent enough to create abhorrence

and fear in the Petitioner. The Petitioner could no longer tolerate the Respondent due to his behavior, which will be addressed later, and this has not changed even after the more than a half year of separation.

Details and aspects of the aforementioned behavior of the Respondent are as follows.

B. Since the birth of Erika, the Petitioner often took out his frustration on the Petitioner saying that he could not get enough sleep because their daughter cried at night. The frequency of his impulsive rages of anger on the Petitioner began to increase. The typical behavior the Respondent took when he vented his anger was that he never paid attention if the Petitioner was holding Erika or not. He continued shouting right into the Petitioner's face when his anger exploded. The Respondent had no sense of self-control or consideration to keep the volume of his voice under control, and shouted as loud as possible on a daily basis. The causes for such behaviors were often minor things or unreasonable accusations.

C. The Petitioner returned to work from her maternity leave on April 1, 2004. Upon her return to work, her mother took part in providing day-care for their daughter since both the Petitioner and the Respondent were working full-time during the day. This idea was developed and agreed upon by both the Petitioner and the Respondent long ago. Under that agreement, either the Respondent or the Petitioner (whoever came home first) was to take over childcare.

However, the reality was that the Respondent did not follow the agreement when the Petitioner could not get home before him. He did not take over the childcare from his mother-in-law after he came home from work. He simply did not take part in looking after his daughter. Thus the Petitioner often had to take charge of the childcare even when she came home after him. The following episode illustrates a prominent example of such behavior.

One evening, the Petitioner came home late from work. She had asked the Respondent beforehand if he would look after Erika from 6 p.m. to 9 p.m. After she came home, she found that the Respondent simply placed Erika in her bed without giving her a bath or changing her clothes. When the Petitioner asked the Respondent why this had happened, he replied, "I did well. Erika didn't do well." He simply blamed a seven month old infant.

D. The Petitioner was under tremendous stress because her life with the Respondent who impulsively exploded his anger at her day and night continued. Due to her stressful life, the Petitioner had to go to her mother's home when returning from her commute from work because she felt sick during her commute. This happened even after she left her home to her mother's place. The Petitioner needed to look after Erika who was an infant, so she continued to do so with her mother's cooperation. However, the Respondent was abusive to his mother-in-law, stating such things as "you are destroying my family" and so forth. He also threw her belongings at her, behaving rudely to her.

E. The Respondent's abusive speech was directed at the Petitioner also: "You distrust men because your mother got divorced", "Troubles in our relationship is because you are depressed", "Your depression is causing you to see things negatively", "You don't need a man any more after a baby is born," and so on. Such abusive statements were repeated, and the Respondent acted as if there was no fault on his side for his horrible behavior, and maintained his irresponsible attitude.

The Petitioner had no choice but to live a separate life from the Respondent, and moved to her mother's place with Erika, because the Respondent showed no sign of improvement in his behavior.

The Respondent never corrected his behavior even after the separation started. When he visited the Petitioner's new residence he would start shouting and make abusive statements again to the Petitioner and her mother.

F. The Petitioner felt unspeakable fear for the Respondent who shouted and directed abusive speech at her even at her new residence. She started to feel fear of the Respondent just by having him near her.

It has been over half year since the separation began, but the Petitioner still lives in terror of the Respondent because it causes her emotional pain. This is evident from the mediation process, during which she strongly hoped not to see the Respondent during the process. The following incident exemplifies the Petitioner's state of emotion toward the Respondent. On the first mediation day, the Respondent ambushed her at the subway station so that she had to exchange some words with him. Although the Respondent did not raised his voice at her this time, the Petitioner was shaky and nervous which was clearly

different from her usual self.

Having the Petitioner in such a poor emotional condition because of the Respondent, it is impossible to have them share the same space. Therefore we can conclude that their marriage cannot be continued, and it is evident that their marriage has been irretrievably broken.

(2) Cause of Divorce #2

After the Petitioner and the Respondent commenced their separation, from September 2003, the Respondent began to have relationships with women other than his wife. On October 18 and 19, 2003, the Respondent brought one of the women to his home and spent nights there with this woman. This can be observed from Evidence 4, page 11 and 12.

The Respondent told the woman that his divorce was already settled (Evidence 4, page 13 and 14). Based on such a behavior, one would have to say that the Respondent had an extramarital affair(s).

(3) Conclusion

Based on the causes and facts explained above, we must say that the marriage of the Petitioner and the Respondent is irretrievably broken.

3) Mediation and Its Results

The Petitioner requested a mediation for reconciliation of marriage (divorce) to the Tokyo Family Court on November 6, 2003 (Heisei 15 (F-I) No. 8195 Mediation for Marriage Reconciliation). However, the mediation failed after the third session (February 24, 2004) based on the expectation that no issue could be resolved through this mediation process for either party (see Evidence 5).

4) Conclusion

The Petitioner requests a divorce by judgment of the Family Court based on the reasons mentioned above.

3. Custody of the Child (Regarding Ground of Petition 2)

1) Specifics about the facts

- (1) As it is mentioned under 2(1), during the Petitioner and the Respondent's communal life, the Respondent barely provided care for their daughter, Erika. He only provided perfunctory care for the daughter without thorough attention, which any infant would need.

In addition to his lack of care for Erika, when the Petitioner was holding and trying to stop Erika from crying at night, the Respondent would condemn her by saying, "Why don't you just leave her alone?" and other things to block her from taking care of their daughter. He also became aggressive toward the Petitioner when she tried to adjust the air conditioning so that it would not blow cold air directly to Erika. He again condemned the Petitioner saying, "You are too overprotective", and tried to stop the Petitioner from providing proper care for Erika. He repeated such behaviors and speeches that could harm Erika's health.

- (2) Furthermore, the Petitioner was usually holding Erika when the Respondent was shouting at her. He was inconsiderate for the fact his loud voice could create serious fears in Erika, who was just an infant. Ordinarily, a father would realize such action can scar his child emotionally, but the Respondent was indifferent to his action.

Due to his abusive behaviors, Erika often exhibited unnatural quietness as if she was daunted when the Petitioner and the Respondent had a communal life.

Conversely, Erika is curious to her surroundings and shows her reactions to them since her parents began living separately. She now behaves open and naturally.

2) Evaluation and Conclusion

The Respondent's speeches and behaviors explained in (1) only prove that he provides a negative influence on Erika's upbringing if he takes the custody of the child.

We can conclude that an ideal environment for Erika would be for the Petitioner to raise her. This conclusion can be drawn from the episode described in (2).

In addition to these circumstances, Erika is only a one year old infant, who needs a great deal of care and consideration on daily basis. Given the amount of work involved to raise Erika, the Petitioner -- who has been taking care of her daughter -- should have the custody of the child instead of the Respondent who does not have any experience in looking after Erika for long periods of time.

4. Child Support Payment (Causes and Facts of Petition regarding Ground of Petition 2)

After the Petitioner and the Respondent commences their separation, the Respondent paid US\$1,080 per month to her bank account for child support until December 2003, but this payment has been stopped since January 2004.

The Petitioner does not have any objection to the amount of US\$1,080 per month by way of child support payment.

For this reason, the Petitioner demands that the Respondent pay US\$1,080 per month as Erika's child support payment.

5. Property Division on Divorce (Causes and Facts of Petition 4 regarding Ground of Petition 1)

1) Assets as of August 19, 2003

The joint assets of the Respondent and the Petitioner, such as savings, as at August 19, 2003 are as follows:

① Navy Federal Credit Union (NFCU) Savings

US\$18,461.24

② NFCU Checking

US\$10,473.84

③ NFCU Share Certificate

US\$20,252.75

④ USAA Brokerage

US\$57,508.35

⑤ USAA Mutual Fund

US\$56,792.80

2) Transfer of assets after August 19, 2003

- (1) On August 21, 2003, the Respondent transferred US\$40,000.00 from ①NFCU Savings to ②NFCU Checking. He also moved US\$20,262.04 from ③NFCU Share Certificate to ②NFCU Checking.

According to the Petitioner's investigation, it has been confirmed that the final value of ③NFCU Share Certificate was US\$20,164.04 which matches the amount mentioned above.

- (2) On August 22, 2003, the Respondent moved US\$20,000.00 from ②NFCU Checking to ④USAA Brokerage.
- (3) On August 25, 2003, the Respondent transferred US\$6,000.00 from ②NFCU Checking to ⑤USAA Mutual Fund. He also transferred US\$14,000.00 from ②NFCU Checking to ④USAA Brokerage.
- (4) On September 10, 2003, the Respondent closed ①NFCU Savings, and transferred US\$4,000.00 from ①NFCU Savings and US\$5,097.12 from ②NFCU Checking to his personal account.
- (5) On September 22, 2003, the Respondent transferred US\$34,000.00 from ④USAA Brokerage to ⑤USAA Mutual Fund.
- (6) On September 26, 2003, US\$80,000.00 from ⑤USAA Mutual Fund was either moved to the Respondent's personal account or was withdrawn to somewhere by him. As an additional remark, the Respondent stated the Petitioner that the remaining assets were for her after he moved US\$80,000.00.
- (7) Since the Respondent changed the remittance account to his own new savings account for ④USAA Brokerage and ⑤USAA Mutual Fund, the Petitioner sold most of the stocks and mutual funds in order to transfer the remaining assets (a total of US\$74,301.15) in order to secure them. However, the Respondent changed the remittance account from hers to his, which raised suspicion to the USAA. Thus the USAA froze the remaining assets with the effect that neither party could transfer any funds anywhere.

3) Evaluation

The assets mentioned above were built under agreement between the Petitioner and the Respondent. It is unlikely that the assets were to be spent as living expenses from August 19, 2003 to when this petition was filed.

Therefore, at least US\$81,744.49, which is the half of the total assets (US\$163,488.98) as of August 19, 2003, should be awarded to the Petitioner.

The Japanese yen exchange rate on the day before we filed this petition was US\$1.00 to JPY105.78 (see Evidence 6). Using this exchange rate, US\$81,744.49 converts to JPY8,646,932.

The Petitioner requests JPY8,646,932 as a division of property at the time of the dissolution of marriage.

6. Compensation for Illegal Acts (Causes and Facts of Petition 5 regarding Ground of Petition 2)

1) Illegality and Deliberate Negligence

The Respondent's actions toward the Petitioner, which are cited in (1) of 2, constitute illegality because they were unilateral actions and contain enough evidence to be recognized as domestic violence.

The Respondent behaved in such ways with awareness, and it is easily understood that if someone, like the Respondent who has a physical advantage, shouts at a person (in this case, his wife) by giving his side of an argument for a long time period, she would receive tremendous emotional damage and would feel great fear of him. Therefore, there was illegality or deliberate negligence on the Respondent regarding his acts as stated above.

2) Damage and Causation

The Petitioner suffered from emotional pain caused by her husband's domestic violence mentioned above. The compensation for this emotional pain does not result in an amount of below JPY3,000,000.

3) Conclusion

The Respondent's aforementioned behaviors constitute illegal actions (Civil Code 709).

In addition to the division of assets, the Petitioner requests the payment of JPY3,000,000.

List of Evidence

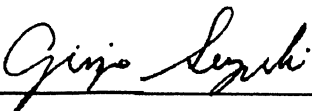
1. Petitioner's Family Registry
2. E-mail logs
3. Article from Nihon Keizai Newspaper (February 5, 2004 evening edition)
4. E-mail logs
5. Mediation court record
6. Article from Nihon Keizai Newspaper (March 31, 2004 morning edition)

Attachments

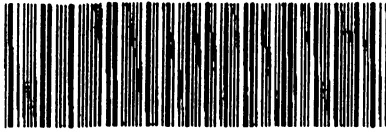
1. Copy of Petition 1 copy
2. Copies of Evidences..... 2 copies each
3. Qualification Certificate.....1 copy
4. Authorization for lawsuit.....1 copy
5. Petitioner's record of residence....1 copy (as a proof of the Respondent's address)

I certify that this Petition for Divorce is a true and correct translation of the Japanese language original, and that I am qualified to make this translation.

June 24, 2004



Ginjiro Suzuki (Attorney-at-law)



03-3-03026-0 20869881 AMPT 05-10-04

1327 5/11/2004 00054

**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

IN COUNTY FILED
CLERK'S OFFICE
A.M. MAY 10 2004 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

In re the Marriage of:

PETER PAUL TOLAND

NO. 03-3-03026-0

**AMENDED PETITION FOR
DISSOLUTION OF MARRIAGE
(PTDSS)**

and

Petitioner,

ETSUKO FUTAGI TOLAND

Respondent.

I. BASIS

1.1 IDENTIFICATION OF PETITIONER.

Name: Peter Toland, Birth date 6/15/67

Last known residence Megishi US Military HOuseing, Yokohama, Japan

1.2 IDENTIFICATION OF RESPONDENT.

Name Etsuko Futagi Toland, Birth date 9/27/71

Last known residence 2-15-19-102 Honkomagome, Bunkyo-ku, Tokyo, Japan 113-0021

1.3 CHILDREN OF THE MARRIAGE DEPENDENT UPON EITHER OR BOTH SPOUSES.

The husband and wife are both the parents of the following dependent children:

Name (first/last) Erika Toland Age 1

1.4 ALLEGATION REGARDING MARRIAGE.

This marriage is irretrievably broken.

1.5 DATE AND PLACE OF MARRIAGE.

The parties were married on 3/22/95 at Tokyo, Japan.

1.6 SEPARATION.

Husband and wife separated on 7/13/03

PET FOR DISSO OF MARRIAGE (PTDSS) - Page 1 of 4
WPF DR 01.0100 (7/2003) - RCW 26.09.020

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1008 S. Yakima Suite 202
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(253) 272-1434

ORIGINAL

1 1.7 JURISDICTION.

2 This court has jurisdiction over the marriage.

3 This court has jurisdiction over the respondent because:

4 Both parties are U.S. Citizens. The child of the marriage is a U.S. citizen.
 5 Petitioner is a membr of the armed forces in Japan. The last residence of the parties
 6 moving to Japan was Washington. Both parties have sufficient contacts with
 7 Washington state to establish jurisdiction. No other country has jurisdiction over the
 8 marriage.

8 1.8 PROPERTY.

9 There is community or separate property owned by the parties. The court should make a
 10 fair and equitable division of all the property.

11 The petitioner's recommendation for the division of property is set forth below.

12 The petitioner should be awarded the parties' interest in the following
 13 property: See exhibit A.

14 The respondent should be awarded the parties' interest in the following
 15 property: See exhibit B.

15 1.9 DEBTS AND LIABILITIES.

16 The parties have debts and liabilities. The court should make a fair and equitable
 17 division of all debts and liabilities.

18 The parties have no debts or liabilities.

18 1.10 SPOUSAL MAINTENANCE.

19 Spousal maintenance should not be ordered.

20 1.11 CONTINUING RESTRAINING ORDER.

21 Does not apply.

22 1.12 PREGNANCY.

23 The wife is not pregnant.

24 1.13 JURISDICTION OVER THE CHILDREN.

25 This court has jurisdiction over the child for the reasons set forth below.

This state is the home state of the child because The child and the parents or the child and at least one parent or person acting as a parent, have significant connection with the state other than mere physical presence; and substantial evidence is available in this state concerning the child's care, protection, training and personal relationships and the child has no home state elsewhere.

No other state has jurisdiction.

Other:

All parties are U.S. citizens including the child. The father is stationed with the military in Japan but is a resident of Washington State.

1.14 CHILD SUPPORT AND PARENTING PLAN FOR DEPENDENT CHILDREN.

Support for the dependent child listed below, should be set pursuant to the Washington State Child Support Schedule.

Name of Child	Mother's Name	Father's Name
Erika	Etsuko Toland	Peter Toland

The petitioner's proposed parenting plan for the child listed above is attached and is incorporated by reference as part of this Petition.

(The following information is required only for the child who is included in the petitioner's proposed parenting plan.)

During the last five years, the child has lived in the following places with the following persons (list each place the child lived, including the State of Washington, the dates the child lived there and the names of the persons with whom the child lived. The present addresses of those persons must be listed in the required Confidential Information Form):

1) From October 17, 2002 to July 13, 2003, the child lived in Negishi U.S. Military Family Housing Yokohama, Japa, child lived with both parties.

2) From July 13, 2003 to present with the respondent mother and Akikio Futagi, the child's maternal grandmother.

Claims to custody or visitation:

1 The petitioner does not know of any person other than the respondent who has physical
2 custody of, or claims to have custody or visitation rights to, the child.

3 Involvement in any other proceeding concerning the child:

4 Other legal proceedings concerning the child:

5 1.15 OTHER:

6
7 **II. RELIEF REQUESTED**

8 The petitioner REQUESTS the Court to enter a decree of dissolution and to grant the relief
9 below.

10 Approve the petitioner's proposed parenting plan for the dependent child listed in
11 paragraph 1.14.

12 Determine support for the dependent child listed in paragraph 1.14 pursuant to the
13 Washington State Child Support Schedule.

14 Divide the property and liabilities.

15 Award the tax exemptions for the dependent child listed in paragraph 1.14 as follows:

16 To the father.

17 Dated: 7 MAY 2004

18 PETER PAUL TOLAND JR
19 PETER Paul Toland
20 Petitioner

21 Erik Bjornson
22 W.S.B.A. #25204

23 I declare under penalty of perjury under the laws of the State of Washington that the foregoing
24 is true and correct.

25 Signed at YOKOSUKA NAVY BASE [City] JAPAN [State] on 5/7/04 [Date].

26 PETER PAUL TOLAND JR
Peter Toland PETER PAUL TOLAND JR
Signature of Petitioner

PET FOR DISSO OF MARRIAGE (PTDSS) - Page 4 of 4
WPF DR 01.0100 (7/2003) - RCW 26.09.020

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EXHIBIT A**Property that should be awarded to Peter Paul Toland Jr.**

PROPERTY	APPROXIMATE VALUE
Peter Paul Toland Jr.'s Roth IRA accounts	\$12,500
Peter Paul Toland Jr.'s Navy Federal Credit Union Checking Account	\$30,000
Peter Paul Toland Jr.'s Navy Federal Credit Union Savings Account	\$24,000
Peter Paul Toland Jr.'s USAA Checking Account	\$600
Peter Paul Toland Jr.'s USAA Savings Account	\$100
Joint Money Market Account	\$5,000
Joint Mutual Fund (S&P 500 Index Fund)	\$9,500
Joint Brokerage Account	\$59,000
Used Automobile	\$500
TOTAL	\$141,200

Household items currently held at Petitioner's (Peter Paul Toland Jr.) residence at 553-B Negishi Heights, Negishi Military Housing area, Yokohama, Japan, will go to Peter Paul Toland Jr. Household items currently at respondent's (Etsuko Futagi Toland) residence at 2-15-19-102 Hokomagome, Bunkyo-ku, Tokyo, Japan will go to Etsuko Futagi Toland.

Petitioner's military retirement in entirety should be awarded to Petitioner. Respondent's retirement benefits from her career should be awarded to respondent.

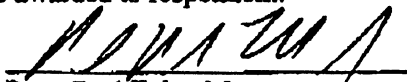

Peter Paul Toland Jr.

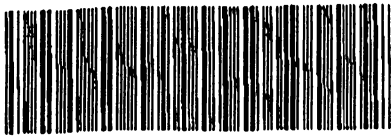
EXHIBIT B**Property that should be awarded to Etsuko Futagi Toland**

PROPERTY	APPROXIMATE VALUE
Etsuko Futagi Toland's Roth IRA accounts	\$12,500
Etsuko Futagi Toland's Japanese Bank Accounts	\$87,000
Etsuko Futagi Toland's U.S. Bank Account	\$35,000
Joint Money Market Account	\$2,000
Joint Mutual Fund Account	\$2,000
Joint Brokerage Account	\$3,000
TOTAL	\$141,500

Household items currently held at Petitioner's (Peter Paul Toland Jr.) residence at 553-B Negishi Heights, Negishi Military Housing area, Yokohama, Japan, will go to Peter Paul Toland Jr. Household items currently at respondent's (Etsuko Futagi Toland) residence at 2-15-19-102 Hokomagome, Bunkyo-ku, Tokyo, Japan will go to Etsuko Futagi Toland.

Respondent's retirement benefits in their entirety should be awarded to respondent.
Petitioner's retirement benefits should be awarded to petitioner.


Peter Paul Toland Jr.



03-3-03026-0 20989882 PPP 05-10-04

1327 5/11/2004 00063

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY 10 2004 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

In re the Marriage of:

NO. 03-3-03026-0

PETER PAUL TOLAND

**PARENTING PLAN
PROPOSED (PPP)**

Petitioner,

and

ETSUKO FUTAGI TOLAND

Respondent.

This parenting plan is proposed by Petitioner.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following child:

Name

Age

Erika Toland 1

II. BASIS FOR RESTRICTIONS

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child and the right to make decisions for the child.

2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

PARENTING PLAN (PPP, PPT, PP) Page 1 of 7
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194

ORIGINAL

2.2 OTHER FACTORS (RCW 26.09.191(3)).

Does not apply.

The mother's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow:

The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.

A parent has withheld from the other parent access to the child for a protracted period without good cause.

III. RESIDENTIAL SCHEDULE

The residential schedule must set forth where the child shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE.

Prior to enrollment in school, the child shall reside with the father, except for the following days and times when the child will reside with or be with the other parent:

From Friday 6:00 p.m. to Sunday 6:00 p.m. every other week. However, all visitation shall take place in the United States where the petitioner is living.

3.2 SCHOOL SCHEDULE.

Upon enrollment in school, the child shall reside with the except for the following days and times when the child will reside with or be with the other parent:

From Friday 6:00 p.m. to Sunday 6:00 p.m. every other week. However, all visitation shall take place in the United States where the petitioner is living.

3.3 SCHEDULE FOR WINTER VACATION.

The child shall reside with the father during winter vacation, except for the following days and times when the child will reside with or be with the other parent: the child shall reside with the mother during odd years if she is located within the United States.

3.4 SCHEDULE FOR OTHER SCHOOL BREAKS.

PARENTING PLAN (PPP, PPT, PP) Page 2 of 7
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194

The child shall reside with the father during other school breaks, except for the following days and times when the child will reside with or be with the other parent:

the child shall reside with the mother during even years if she is located within the United States.

3.5 SUMMER SCHEDULE.

Upon completion of the school year, the child shall reside with the except for the following days and times when the child will reside with or be with the other parent:

Same as school year schedule.

3.6 VACATION WITH PARENTS.

Does not apply.

3.7 SCHEDULE FOR HOLIDAYS.

Does not apply.

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

Does not apply.

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

Does not apply.

3.10 RESTRICTIONS.

All visitation by the mother shall take place in the city where the father is located in the United States.

3.11 TRANSPORTATION ARRANGEMENTS.

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child between parents shall be as follows:

The party ending a visitation period shall provide transportation.

3.12 DESIGNATION OF CUSTODIAN.

The child named in this parenting plan are scheduled to reside the majority of the time with the father. This parent is designated the custodian of the child solely for purposes

PARENTING PLAN (PPP, PPT, PP) Page 3 of 7
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194

of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 OTHER.

3.14 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION OF A CHILD.

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule). The objection must be served on all persons entitled to time

with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

IV. DECISION MAKING

4.1 DAY-TO-DAY DECISIONS.

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

4.2 MAJOR DECISIONS.

Major decisions regarding each child shall be made as follows:

Education decisions: joint

Non-emergency health care: joint

Religious upbringing: joint

4.3 RESTRICTIONS IN DECISION MAKING.

Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

V. DISPUTE RESOLUTION

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must, be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

mediation by Pierce County for Dispute Resolution, or

The cost of this process shall be allocated between the parties as follows:

1 50% mother 50% father.

2 The counseling, mediation or arbitration process shall be commenced by notifying the
3 other party by

4 In the dispute resolution process:

- 5 (a) Preference shall be given to carrying out this Parenting Plan.
- 6 (b) Unless an emergency exists, the parents shall use the designated process to
7 resolve disputes relating to implementation of the plan, except those related to
8 financial support.
- 9 (c) A written record shall be prepared of any agreement reached in counseling or
10 mediation and of each arbitration award and shall be provided to each party.
- 11 (d) If the court finds that a parent has used or frustrated the dispute resolution
12 process without good reason, the court shall award attorneys' fees and financial
13 sanctions to the other parent.
- 14 (e) The parties have the right of review from the dispute resolution process to the
15 superior court.

13 VI. OTHER PROVISIONS

14 There are no other provisions.

16 VII. DECLARATION FOR PROPOSED PARENTING PLAN

17 (Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under
18 the laws of the State of Washington that this plan has been proposed in good faith and
19 that the statements in Part II of this Plan are true and correct.

20 
Peter Toland
Father

21 5/7/04 YOKOSUKA, JAPAN
Date and Place of
Signature

22 VIII. ORDER BY THE COURT

23 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and
24 approved as an order of this court.

25 **WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is
punishable by contempt of court and may be a criminal offense under RCW 9A.040.080(2) or
PARENTING PLAN (PPP, PPT, PP) Page 6 of 7
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194

1 9A.40.070(2). Violation of this order may subject a violator to arrest.

2 When mutual decision making is designated but cannot be achieved, the parties shall make a
3 good faith effort to resolve the issue through the dispute resolution process.

4 If a parent fails to comply with a provision of this plan, the other parent's obligations under the
5 plan are not affected.

6 Dated: _____

Judge/Commissioner

7 Presented by: _____

Approved for entry: _____

8
9 Erik Bjornson
10 W.S.B.A. #25204
Attorney for Petitioner

W.S.B.A. #
Attorney for Respondent



冒元-さつき法律事務所

T-876 P.02/02 U-887

03-3-03026-0 21124824 AFSR 06-08-04

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN - 7 2004 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTYSUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

In re the Marriage of:

PETER PAUL TOLAND,

Petitioner,

and

ETSUKO FUTAGI TOLAND,

Respondent.

NO. 03-3-03026-0

DECLARATION OF SERVICE

I, MIHO HIRASHITA (printed name of server), swear under penalty of perjury that I served the respondent ETSUKO FUTAGI TOLAND with the following documents on June 7th, 2004 (date of service):

- 1) Amended Summons
- 2) Amended Petition for Dissolution
- 3) Parenting Plan (recently faxed, file on 5/10/04)
- 4) Financial Declaration
- 5) Washington State Child Support Schedule
- 6) Sealed Financial Source Document with attachments

Service was accomplished when I gave Ms. Toland an entire set of of the above documents with Ms. Toland.

DATED THIS May 7, 2004

平下美帆
(Signature of server)

Law Office of Erik Bjornson
1008 S. Yakima Suite 202
Tacoma, WA 98405
253 272 1436

DECLARATION OF SERVICE

ORIGINAL

Domestic Affairs Judge's Seal

MEDIATION RECORD (FINALIZED)

Case Reference: 2004 (IE-I) Case No. 4988
 Provisions requested for custody of child (visitation negotiation)
 Date: 10:00 AM, July 12, 2004
 Place: Fourth Household Affairs Department, Tokyo Family Court
 Domestic Affairs Judge: Jun Abe
 Court Clerk: Yasuo Torii
 Family Court Investigators: Kumiko Kozawa, Norio Togashi
 Parties Involved and Their Appearance:

Address: Negishi Heights 553-B, Terakubo, Naka-ku, Yokohama-shi, Kanagawa

Petitioner: Peter Paul Toland Jr. (Appeared)

Petitioner's Attorneys: Kesuke Onuki (Appeared)

Miho Hirashita (Nonappearance)

Yumiko Takagi (Nonappearance)

Momo Hasegawa (Nonappearance)

Address: 2-15-19-102 Honkomagome, Bunkyo-ku, Tokyo

Respondent: Etsuko Toland (Appeared)

Petitioner's Attorneys: Ginjiro Suzuki (Appeared)

Nao Tsuchiya (Appeared)

Tetsuya Kondo (Nonappearance)

Address: Same as Respondent

Minor: Erika Toland

(Born October 17, 2002)

Mediation was finalized as described in the following mediation provisions.

Third Section, Household Affairs Fourth Department, Tokyo Family Court

Court Clerk: Yasuo Torii

Medication Provisions

1. Both the Petitioner and the Respondent acknowledge that Japanese Court has the international jurisdiction over the settlement of the child custody (visitation negotiation).

Considering the results from two trial visitations with the Family Court Investigators and having the Petitioner depart for the United States of America on July 22, 2004, the Petitioner and the Respondent agree on the following terms and conditions regarding the custody of the child until she turns 5 years old (the end of October 2007). However, this duration shall be altered if the Petitioner and the Respondent are divorced. In that case these terms and conditions will expire at that time. This agreement has the same effectiveness as a settled adjudication according to the Domestic Affairs Trial Law - Article 21.

2. The Respondent approves the Petitioner to meet the child during the period listed below with the following terms and conditions:

- (1) Period

- ① During the Petitioner's vacation time (Usually two weeks between June to August, but can take place at another time of the year).
- ② During the Christmas vacation (In December staying in Japan for two weeks).
- ③ First visit to Japan (Planned for December 16 to 29, 2004)

- (2) Terms and Conditions

- ① During the Petitioner's child visitation, a person(s) appointed by the Respondent will attend the visitation. The Respondent will bring the child to the Family Problem Information Center (FPIC hereafter) in Toshima-ku, Tokyo, and the Petitioner will come to the same place. After the visitation, the Respondent will meet the child at FPIC to bring her home.
- ② During the Petitioner's stay in Japan, he can exercise the visitation at least 4 times. Details of visitation such as time and date should be discussed between the parties concerned, in good faith. However, the implementation of this visitation must consider the availability of the FPIC, and serious attention should be paid for the child's welfare. Therefore, aforementioned number of visitations, time and other elements can be changed if the health of the child or other issues arise that conflict with the number of visitations.
- ③ The place of visitation is limited to indoors for the duration, and the parties concerned should discuss in good faith if any changes should be made depending on the condition of the child.
- ④ From the Petitioner's second visit to Japan, he must contact the Respondent 3 months prior to his visit about his schedule and visitation plan via e-mail.

- ⑤ The Petitioner is responsible for the cost of visiting Japan, and the Respondent is responsible for the cost of using FPIC.
- ⑥ The first visitation schedule should be FPIC's earliest possible date during the period aforementioned in (1) ③.
- (3) The Petitioner gives an assurance to the Respondent that he shall not abduct the child by taking advantage of the visitations.
- (4) The Respondent promises the Petitioner to send e-mail or pictures of the child three times a year.
- (5) The Petitioner shall pay the Respondent child support in the amount of \$928/month from July 2004 until the parties concerned are divorced. These funds shall be deposited in the child's Yen Savings Account at Citibank Akasaka Branch (Account number: 5030012) before the end of each month.
- (6) The Petitioner shall pay the Respondent child support in the amount of \$5,568 for the January to June 2004 portion. These funds shall be deposited in the bank account stated above before the end of July 2004.
- (7) The Petitioner and the Respondent will review the form of visitation based on the results of visitations and the child's growth and development after the end of October 2007 (This date is subject to the divorce settlement. If divorce is finalized before this date, then a new provision for visitation shall take place at the time of divorce.) If any dispositions are ordered for visitation of the child in the final judgment of the divorce case, both the Petitioner and the Respondent are to obey those dispositions.
- (8) Each party is responsible their own costs regarding these proceedings.

This is a certified copy.

July 23, 2004

Tokyo Family Court

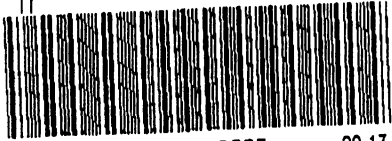
Court Clerk: Yasuo Torii

I certify that this Petition for divorce is a true and correct translation of the Japanese-language original, and that I am qualified to make this translation.

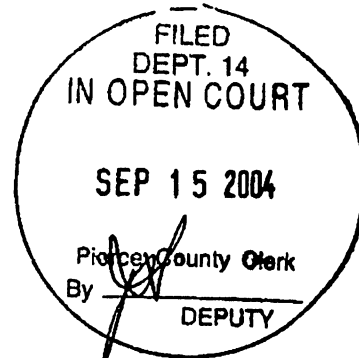


August 5, 2004

Ginjiro Suzuki (Attorney-at-law)



03-3-03026-0 21793713 ORRE 09-17-04



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

PETER PAUL TOLAND, JR,

Petitioner(s) ,

vs.

ETSUKO FUTAGI TOLAND,

Respondent(s) .

Cause No: 03-3-03026-0

**ORDER ON MOTION TO REVISE RE:
DISMISSAL; ORDER STAYING CASE**

(Clerk's Action Required)

I. HEARING

On September 10, 2004, the Court heard the Motion of the Petitioner, Peter Paul Toland, to revise the Commissioner's Order of August 24, 2004. Erik Bjornson represented Mr. Toland. Respondent, Etsuko Futagi Toland, made a special appearance through her attorney, Theresa E. Tilton.

II. FINDINGS OF FACT

The Court having considered the documents in the Court file and the arguments of counsel, the Court now makes the following Findings of Fact:

2.1 The parties were married in Japan in 1995.

2.2 The parties lived together as husband and wife in Washington State from July, 1996 to July, 1999 and acquired real property and legal domicile and residency.

2.3 Both Mr. and Mrs. Toland are U.S. citizens.

2.4 From July, 1999 through July, 2004 Mr. Toland was on military assignment in Japan. Since that time he has been on military assignment in Washington, D.C.

2.5 The parties separated in July of 2003.

2.6 There is a pending dissolution in Japan filed by Mrs. Toland, in which Mr. Toland filed a mediation agreement. There is this pending dissolution action filed by Mr. Toland in Pierce County, Washington.

Decree dated September 29, 2005. Original received on same date.

Secretary of the Court Fumio Mizuno

2004 (Family *ho* [E]), No. 1 Petition for divorce

(Oral proceedings completed: August 5, 2005)

Decision

Nationality	United States of America
Address	2-15-19 Honkomagome, Bunkyo-ku, Tokyo
Petitioner	Etsuko Toland
Petitioner's Attorneys:	Ginjiro Suzuki Nao Tsuchiya

Nationality	United States of America
Address	2015 20TH Road N, Arlington, VA U.S.A.
Respondent	Peter Paul Toland Jr.
Respondent's Attorneys:	Keisuke Onuki Miho Hirashita Yumiko Takagi Momo Hasegawa

Text

1. The marriage between Petitioner and Respondent is dissolved.
2. Full custody of their daughter, Erika (female, born on October 17, 2002) is awarded to Petitioner.
3. Respondent shall pay JPY50,000 by the end of each month to Petitioner from the date this court's ruling becomes final until Erika reaches adulthood.
4. Respondent shall pay Petitioner JPY8,000,000 and annual interest thereon at 5% commencing from the day following the date this decision is entered in judgment until the date payment is complete.
5. Respondent shall pay Petitioner JPY1,000,000 and annual interest thereon at 5% commencing from April 20, 2004 until the date payment is complete.

6. Petitioner shall abandon all other claims.
7. 30% of legal costs shall be borne by Petitioner and the remainder shall be borne by Respondent.
8. This court ruling allows provisional execution of item 5, above.

Facts and Reasons

No. 1 Judgment Requested by the Parties

1 Petitioner

- (1) To dissolve the marriage between Petitioner and Respondent.
- (2) To award full custody of their daughter, Erika (female, born on October 17, 2002) to Petitioner.
- (3) Respondent to pay child support of \$1,080 to Petitioner from the date this Court's ruling becomes final until Erika reaches adulthood.
- (4) Respondent to pay JPY8,646,932 to the Petitioner.
- (5) Respondent to pay Petitioner JPY3,000,000 and annual interest thereon at 5% from April 20, 2004 until the date payment is made.
- (6) Legal expenses to be borne by Respondent.
- (7) A Court ruling allowing provisional execution of Item 5, above.

2 Respondent

- (1) Pleading before this action
Rejection of the present suit.
- (2) Present action
Dismissal of Petitioner's claims.

No. 2 Summary of the Case

- 1 In this case, the wife, who is the petitioner, requests dissolution of the marriage with the husband, who is the respondent. Also, Petitioner requests custody of their daughter Erika (hereinafter "the daughter"), payment of child support, and JPY8,646,932 as a division of their assets. Further, Petitioner requests JPY3,000,000 as a solatium for the various illegal acts leading to the divorce. As his pleading in

this matter, Respondent requests rejection of the case, asserting that this Court does not have jurisdiction, and requests dismissal of the case for lack of cause.

- 2 The facts forming the basis of this case are as follows (facts as confirmed by the evidence appended at the end of each item).
 - (1) Petitioner was born in Japan on September 27, 1971, filed a marriage with Respondent on March 22, 1995, and bore a daughter thereafter. The daughter was born in Yokosuka, and has lived since that time in Japan. (Petitioner 1)
 - (2) Although Petitioner has Japanese citizenship, she obtained United States (hereinafter "U.S.") citizenship on April 18, 2003, and made filing to that effect on March 18, 2004, thereby forfeiting Japanese citizenship. (Respondent 1)
 - (3) Respondent was born on June 15, 1967 and has U.S. citizenship. Respondent is a member of the U.S. military and came to Japan in around May 1993, worked at a U.S. military base, and resided in base housing. (Petitioner 10)
 - (4) Petitioner and Respondent married in Japan, and with Respondent's subsequent return to the U.S., Petitioner went to the U.S. as well in January 1996. Petitioner resided with Respondent first in Texas and then in Seattle, Washington, returning to Japan in July 1999. (Petitioner 10)
 - (5) After their return to Japan in July 1999, Petitioner and Respondent resided in U.S. military housing and bore a daughter on October 17, 2002. (Petitioner 1, Petitioner 10)
 - (6) Subsequent to her return to Japan, Petitioner obtained employment with a Japanese company, began employment as a regular employee of the Canadian province of Alberta's office in Japan. (Petitioner 10, record of Petitioner's deposition)
 - (7) As stated above, Petitioner resided with Respondent in U.S. military housing, but left this location with her daughter in July 2003 and has been living with the daughter with Petitioner's mother in Honkomagome, Bunkyo-ku, Tokyo. The daughter has been attending a day care center beginning in April 2004. (Petitioner 10, record of Petitioner's deposition)
 - (8) Petitioner petitioned the Tokyo Family Court for mediation of her request for divorce from Respondent (2003 (Family *i*) No. 8195, Marital Relations Reconciliation Mediation Item), and Respondent also appeared in an attempt at reconciliation. However, on February 24, 2004, in the absence of any hope of reconciling differences between the parties, this attempted reconciliation was deemed not successful. (hereinafter "the divorce mediation") (Petitioner 5)
 - (9) In 2004, Respondent petitioned for mediation of his request to Petitioner for child visitation of the daughter (2004 (Family *i*), No. 4988, Child Custody Proceedings

(Child Visitation) Petition), and a settlement was reached on July 12, 2004, as follows (hereinafter "the daughter visitation mediation") (Petitioner 13)

- ① Both Respondent and Petitioner acknowledge that the Japanese Court has international jurisdiction over the settlement of child custody (visitation negotiation). In light of the results from two visitations on a trial basis with the Family Court Investigators and Respondent's return to the United States of America on July 22, 2004, Respondent and Petitioner agree on the following terms and conditions regarding the custody of the daughter which will remain in force until the end of October 2007 when the daughter shall have reached the age of 5. (However, these terms and conditions shall expire at the time of Respondent and Petitioner's divorce.) This agreement shall have the same effect as a settled adjudication in accordance with the Domestic Affairs Trial Law - Article 21.
- ② Petitioner consents to Respondent's meeting with the daughter during the periods listed below and under the following terms and conditions:
 1. Period
 - (a) During Respondent's vacation time (Usually in the period between June and August, and planning to stay in Japan for approximately two weeks. However, vacations may vary according to the particular year.)
 - (b) During the Christmas vacation (Every December, and staying in Japan for approximately two weeks).
 - (c) First visit to Japan (planned for December 16 to 29, 2004)
 2. Terms and Conditions
 - (a) During Respondent's child visitation, a person(s) appointed by Petitioner will attend the visitation. Petitioner will bring the daughter to the offices of the Family Problem Information Center (hereinafter FPIC) in Toshima-ku, Tokyo, and will meet with Respondent at the same place. After the visitation, Petitioner will meet the daughter at FPIC [to escort her home].
 - (b) During Respondent's stays in Japan, he can visit with the daughter at least 4 times. Details of visitation such as time and date shall be discussed in good faith between the parties concerned. However, the implementation of these visitations shall consider the availability of the FPIC and give due regard for the daughter's welfare. There-

fore, the aforementioned number of visitations, their time, and other elements may be changed if there is worsening of the health of the daughter or other issues arise to conflict with the number of visitations.

3. The place of visitation is for the time being limited to indoors, and the parties concerned should discuss in good faith if any changes should be made in light of the condition of the daughter.
4. Starting with Respondent's second visit to Japan, he must contact Petitioner via e-mail three (3) months prior to his visit to inform Petitioner of his schedule and visitation plans.
5. Respondent shall be responsible for his expenses associated with his visits to Japan, and Petitioner is responsible for the cost of using FPIC.
6. The first visitation schedule should be at FPIC's earliest possible convenience during the period described in (1) (c), above.
- ③ Respondent gives a firm assurance to Petitioner that he shall not take advantage of the visitations to take the daughter away.
- ④ Petitioner promises Respondent to send e-mail or pictures with news about the daughter three times a year.
- ⑤ Respondent shall pay Petitioner child support in the amount of \$928/month from July 2004 until the parties concerned are divorced. These funds shall be deposited in the daughter's Yen Savings Account at the Citibank Akasaka Branch (Account number: 5030012) before the end of each month.
- ⑥ Respondent shall pay Petitioner child support in the amount of \$5,568 for the January to June 2004 portion. These funds shall be deposited in the bank account stated above before the end of July 2004.
- ⑦ Respondent and Petitioner will review the form of visitation based on the results of visitations and the daughter's growth and development subsequent to the end of October 2007 (This date is subject to the divorce settlement. If the divorce is finalized before this date, then a new provision for visitation shall take place at the time of divorce.) Both Respondent and Petitioner shall abide by any dispositions that may be ordered for visitation of the daughter in the final judgment of the divorce case.
- ⑧ Each party is responsible its own respective costs associated with these proceedings.
- (10) Respondent has filed a motion to divorce Petitioner with the District Court of Superior Court, Pierce County, Washington, U.S. (request for marital assets, child

custody plan, etc.), and the District Court determined that Petitioner and Respondent's petitioned for divorce was within its jurisdiction. (Respondent 16: 1, 2)

Subsequently, upon rehearing the Petitioner's subsequent petition to the District Court, the District Court determined on August 24, 2004 that petitions relating to Petitioner and Respondent's marital relations are not within its jurisdiction. (Petitioner 16: 1, 2)

However, although the District Court ruled on September 15, 2004 that it had jurisdiction over Petitioner and Respondent's marital relations, it determined that in the event that Japanese courts decide that they have jurisdiction over Petitioner and Respondent's marriage and assets, it would continue the case until a final verdict is rendered in litigation in Japan. (Respondent 20:1, 2)

- (11) Respondent filed suit for divorce from Petitioner in June 2005 in the Circuit Court of Arlington County, Virginia, U.S.A. Although Respondent had been a resident of Washington State in the past and had a domicile (address in English and American law) there, he had been a resident of the state of Virginia for more than six months prior to the suit and asserted that he therefore had a domicile in the state of Virginia. (Petitioner 37: 1, 2)

3 Claims of the Parties

(1) Petitioner's claims

① Cause of divorce

(a) Respondent's violent behavior in the context of marital life

Petitioner and Respondent led a normal marital life after their marriage, but after the birth of the daughter, Respondent took a violent attitude toward Petitioner. When Respondent would raise his voice and yell when he was displeased with something, unilaterally asserting his own point of view and not permitting Petitioner to respond. As a result, Petitioner came to feel excessive stress and felt an aversion and fear of Respondent. Thus, Petitioner fell into a depressive state. Petitioner was informed by a psychiatrist in September 2003 and that she was depressed (PTSD), with a diagnosis suggesting that the major cause of the depression was psychological domestic violence received from the Respondent. Petitioner then began undergoing clinical treatment in November 2003 once a week, and subsequently once every other week.

After the birth of the daughter, Respondent angrily asserted that he was not able to get sufficient sleep due to their daughter's nighttime cry-

ing. Respondent would exhibit outbursts of anger directed at Petitioner for the slightest reason and would continue to rage in a loud voice, regardless of the fact that Petitioner was holding their daughter in her arms.

(b) Respondent's abandonment of child rearing in the context of the marriage

Although Petitioner had taken maternity leave after the birth of the daughter, she returned to work in April 2003. While Petitioner and Respondent were at their respective jobs, Petitioner's mother would care for their daughter in the home of Petitioner and Respondent. When Petitioner or Respondent would return home, the plan was for the parents' care giving to continue, but Respondent would not care for their daughter even when Petitioner was busy with work and had no alternative but to ask Respondent to care for the child. Respondent would not bathe his daughter or change her clothes and would just leave her lying in her crib. Moreover, notwithstanding the fact that Petitioner's mother was caring for the daughter, Respondent would make abusive claims that Petitioner's mother was trying to destroy his family, and threw things at her. Furthermore, Respondent's attitude was that the above-described behavior on the part of Respondent was in fact Petitioner's fault, and he repeatedly asserted that "You distrust men because your mother is divorced. You and I don't get along well because you're depressed. Since Erika was born, you don't need men or anything else."

(c) Continuation of separation period

In light of the fact that there was no improvement in Respondent's behavior or attitude as described above in (a) and (b), Petitioner went to Petitioner's mother's home in July 2003, and subsequently resided separately from Respondent. At the present time, Petitioner and Respondent are residing separately. Subsequently, Respondent returned on July 22, 2004 to the U.S. and for the present does not have plans to come to Japan. For her part, Petitioner intends to live with her daughter in Japan, and as outlined above resides and is employed in Japan.

(d) Respondent's infidelity

Beginning in September 2003, Respondent began to associate with women other than Petitioner, and from October 18~19, 2003, he invited a woman into the home and she spent the night there.

(e) Thus, the marriage between Petitioner and Respondent as already failed and is such that it cannot continue.

② Child custody

After the birth of the daughter, Petitioner was responsible for her custody and care. On the other hand, Respondent, as described above, did not engage in the upbringing of their daughter, providing no more than perfunctory care, even when requested by Petitioner. Furthermore, the daughter is attending a day care center in Japan, has had made friends, and is living a stable life. There is no need to change her living environment. Moreover, inasmuch as Respondent has made no effort to pay the care and educational expenses for the daughter that had been agreed upon in the child visitation mediation and, given their daughter's age and other circumstances, full custody of the daughter should be given to Petitioner.

③ Distribution of assets

As of August 2003, the joint assets of Petitioner and Respondent were \$163,488.98 (hereinafter in U.S. dollars). Thus at this point in time, assets held jointly by the couple (a) A Navy Federal Credit Union (hereinafter "NFCU") savings account with \$18,461.24; (b) An NFCU checking account with \$10,473.84; (c) An NFCU share certificate account with \$20,252.75; (b) A USAA brokerage account with \$57,508.35; and (e) A USAA mutual fund account with \$56,792.80. Divided in half, Respondent should pay to Petitioner \$81,744.49. At an exchange rate of JPY105.78 to the U.S. dollar as of August 19, 2003, Petitioner requests the payment of JPY8,646,932.

④ Damages based on illegal behavior

As a result of Respondent's actions as outlined in ①(a), above, Petitioner suffered mental anguish. Moreover, subsequent to the child visitation mediation agreement, and notwithstanding the fact that Respondent failed to pay child care expenses for the daughter in accordance with the provisions of the agreement, Respondent telephoned Petitioner at her place of employment any number of times on November 10, 2004 asserting repeatedly that he had paid these child care expenses. As a result, Petitioner suffered mental anguish. JPY3,000,000 is appropriate solatium for this behavior.

(2) Respondent's claims

① Pleading before this action

(a) In this case, Petitioner is requesting divorce, etc. from Respondent. However, this case is one of international jurisdiction and in principle should be handled in the location of the Respondent. On this point, in actual practice the case is being handled this way, as well. However, Re-

spondent was a member of the United States armed forces stationed in Japan and therefore cannot be said to have had a residence in Japan.

- (b) With regard to the question of whether not foreigners have addresses in Japan, it is insufficient for an individual simply to have a residence in a Japanese municipality, and foreigners must at least be registered aliens residing in a municipality and have residential qualifications. However, Respondent is a member of the United States armed forces who was stationed at all times in Japan under orders, serving until his military duties called for him to withdraw. Respondent was at all times in a situation in which he did not know when he would depart from Japan, so was not subject to control under the alien registration system of Japan. In accordance with Article 9, Paragraph 2 of the Japan-U.S. Status of Forces Agreement, Respondent was exempt from passport and visa regulations and did not have residential qualifications as a registered alien. Therefore, Respondent does not have an address in Japan.
- (c) Furthermore, as a result of the implementation of amended regulations regarding family register procedures (October 2, 1989, Ministry of Justice, Civil Affairs Division circular No. 3900 (No. 8-1 (2) d (b)), Respondent does not have a permanent residence in Japan.
- (d) Therefore, this case should be dismissed because this Court does not have jurisdiction in this matter.

② Present action

(a) Cause of divorce

Respondent recognizes that at the present time Petitioner and Respondent's marriage is irreconcilably broken. The cause of this situation is ongoing behavior by Petitioner that in the U.S. would be tantamount to parental kidnapping.

Moreover, Respondent denies all the facts alleged by Petitioner as the cause of divorce. In short, Respondent did not raise his voice and yell when he was displeased with something, unilaterally asserting his own point of view and not permitting Petitioner to respond. Respondent spoke with and argued with Petitioner's mother on only three occasions. On May 26, 2003, Respondent stayed in his own home on his day off to take his daughter on a picnic. On that occasion, Petitioner's mother suddenly appeared, saying that she was going to take the daughter to her own house, and that sparked an argument. Subsequently, although Re-

spondent tried to avoid an argument with Petitioner, feeling that he should talk things over with Petitioner he spoke to her on July 13, 2003, and this resulted in an argument. On the next day, July 14, when Petitioner indicated that her mother would assist in the daughter's care, Respondent indicated that assistance would not be necessary because he was there. Petitioner did not listen and indicated that she did not trust Respondent, and this resulted in an argument. Further, Respondent denies that Petitioner came to feel excessive stress and felt an aversion and fear of Respondent and that Petitioner fell into a depressive state. Petitioner had previously suffered from depression. Also, it was only on one occasion that Respondent did not bathe his daughter or change her clothes. That was because Petitioner had asked Respondent to have her mother, who had come on that day to assist in caring for the child, go home early and Respondent took Petitioner's mother home and later when he returned home had to take care of the daughter while changing his own clothes. It had been a busy day, and the daughter was sleeping soundly, so he let her continue sleeping. As a result, all that happened was that the daughter was not bathed or her clothes changed. Furthermore, Respondent did not say: "You distrust men because your mother is divorced. You and I don't get along well because you're depressed. Since Erika was born, you don't need men or anything else." This was something said by the marriage counselor that Petitioner and Respondent had been seeing.

Moreover, on October 13, 2003, although Respondent came to know a woman named Yuka, this came after Respondent petitioned in the state of Washington to dissolve the marriage with Petitioner, and moreover Respondent has not associated with this woman.

(b) Child custody

Respondent has acted with his daughter's interests foremost in mind, returning home two to three hours earlier every night than Petitioner, and has put her to bed after playing with her, bathing her, and feeding her. Moreover, Respondent thinks of his family, and behaves with his daughter uppermost in mind.

In contrast, Petitioner has given priority to her own career over being the mother to her daughter and has worked long overtime hours. Nevertheless, Petitioner took the daughter with her when she went to live sepa-

rately, which is a crime of abducting the daughter. Thus, Respondent has been unable to contact the daughter since Petitioner began to live separately commencing August 23, 2003. These circumstances have exerted a negative impact on the daughter's psychological development and there is moreover a possibility that the daughter is being subjected to psychological and physical abuse by Petitioner. Moreover, Petitioner suffers from depression and a distrust of men. Therefore, custody of the daughter should be awarded to Respondent.

(c) Distribution of assets

Given the mutual assets of Petitioner and Respondent, assets should be distributed in accordance with Attachments A and B.

(d) Illegal behavior

As outlined above, Respondent has no obligation to pay compensation to Petitioner because Respondent has engaged in no illegal acts. Furthermore, according to Washington state law, claims for compensatory damages based on illegal activities associated with divorce in the context of a petition for dissolution of marriage are not permitted.

No. 3 The Verdict of this Court

1 Jurisdiction and applicable law

This Court has trial jurisdiction in Japan for Petitioner's petition for divorce, designation of child custody and payment of child support, petition for payment of a solatium along with the divorce, as well as petition for distribution of assets. Japanese law is applicable to Petitioner's petition for divorce as well as distribution of assets. Japanese law is applicable to designation of custody of the daughter as well as payment of child support, and to payment of a solatium based on the illegal acts leading up to the divorce, respectively. The reasons for this interpretation are outlined below.

(1) Trial jurisdiction

In accordance with the facts underlying this case as outlined above: At the time of Petitioner and Respondent's marriage, Petitioner had Japanese citizenship, and Respondent had American citizenship. Petitioner and Respondent were married in Japan, both persons were residing in Japan, and Petitioner and Respondent had a daughter in Japan, and after their marriage Petitioner and Respondent resided in the U.S. for a time, but they conducted the

majority of their married life in Japan until they were separated, and although Respondent returned to the U.S. in July 2004, Petitioner and the daughter continue to reside in Japan. The illegal acts that Petitioner alleges between Petitioner and Respondent constitute behavior that occurred during the conduct of their married life in Japan. As outlined above, Petitioner petitioned the Tokyo Family Court in the year 2003 for divorce mediation in this matter, and Respondent appeared. At the same Court in the year 2004, Respondent petitioned for child visitation, on the assumption that trial jurisdiction is in Japan, and an agreement was established on the basis of that assumption, Respondent returned to the U.S. in July 2004, but prior to that, in April 19, 2004, Respondent was served with a complaint in this matter in Japan, and on April 23, 2004 retained attorneys Keisuke Onuki, Yumiko Takagi, Miho Hirashita, and Momo Hasegawa. Therefore, at the present time even though Petitioner and Respondent both have American citizenship, we construe Japanese courts as having the power to adjudicate petition for divorce in this matter as well as the designation of child custody, payment of child support, distribution of assets, and claims for a solatium based on the illegal acts.

According to Circular No. 3900 of the Ministry of Justice, Civil Affairs Division, "Handling of family register procedures in accordance with the implementation of a partial amendment of law" dated October 2, 1989, facilities or regions based on Article 6 of the Joint Security Treaty and on mutual cooperation between Japan and United States of America, as well as persons to whom Article 9, Paragraph 1 of the agreement relating to the status of U.S. forces in Japan applies (members or civilian employees of the American armed forces, or their families), are handled as not having a permanent residence in Japan. Respondent is a civilian in the employee of the United States armed forces, and thus in accordance with the circular mentioned above, neither Respondent nor the members of his family, Petitioner and their daughter, have a permanent residence in Japan. Nevertheless, in light of the aforesaid judgments, this matter is not appropriately governed by the aforesaid circular, and at the time petitions in this matter were initiated, Petitioner, Respondent, and their daughter are recognized as having had a permanent residence in Japan.

(2) Applicable law

The main text of Article 16 and Article 14 of the Horei [Private International Law Act of 1898, as amended 2001] shall be applied.

Inasmuch as both Petitioner and Respondent have U.S. citizenship and in light of the common nationality law, construing that [the matter] should be [under] U.S. law, Article 28, Paragraph 3 of the Horei, wherein "...in a state where the law differs by region" pertains. However, as the "rules" indicated in the same paragraph do not exist in the U.S., the nationality law to be applied to Petitioner and Respondent shall be "the law of the region with which that party is most closely connected" in this same paragraph.

According to the facts and subsequently ascertained facts forming the aforesaid assumptions, [the Court] recognizes that: Although both Petitioner and Respondent both have American citizenship, Petitioner was born in Japan on September 27, 1971 and had Japanese citizenship. Petitioner acquired U.S. citizenship on April 18, 2003 and renounced her Japanese citizenship in papers filed on March 18, 2004. Respondent came to Japan in approximately May 1993, was employed at U.S. military bases in Japan, resided in U.S. military housing, marrying Petitioner on March 22, 1995 in Japan, and subsequently lived in Japan. Respondent later returned to his country, and from January 1996 to July 1999 resided with Petitioner in Texas and then in Seattle, Washington, returning to Japan with Petitioner in July of that year to live in Japan. [Petitioner and Respondent's] daughter was born on October 17, 2002, and after the birth of their daughter in the city of Yokosuka, the daughter has lived until the present time in Japan. Subsequent to Petitioner's return from the U.S. to Japan in July 1999, Petitioner has been employed in Japan, and subsequently took the daughter with her and left U.S. military housing in July 2003, and has been living with the daughter with Petitioner's mother in Honkomagome, Bunkyo-ku, Tokyo. A petition for divorce mediation was filed by Petitioner in Tokyo Family Court in the year 2003, and although Respondent appeared and mediation was attempted, the mediation failed on February 24, 2004 with no expectation that an agreement could be reached between the parties. For his part, in the year 2004, Respondent filed a petition for mediation against Petitioner for visitation rights of their daughter in Tokyo Family Court, and a settlement was reached on July 12, 2004. Respondent once again returned to his country later that month, leaving Petitioner and their daughter behind, residing in the state of Washington and subsequently residing in Arlington, Virginia as his a nominal residence. In June 2005, Respondent filed suit in the Circuit Court of Arlington County, Virginia for divorce from Petitioner and, on the basis of that reason, Respondent claims and

that he has resided in the state of Virginia for more than six months.

In light of the aforementioned facts, in accordance with Article 28, Paragraph 3 of the Horei, "the region with which that party is most closely connected" for Petitioner and Respondents is deemed to be Japan. [The Court] therefore construes the Nationality law for Petitioner and Responded to be Japanese law as "the law of the region with which that party is most closely connected."

On the other hand, with regard to designation of custody of the daughter and the payment of child support, the welfare of the child should be considered, and [the Court] construes Article 21 of the Horei to be applicable given the fact that there is a legal relationship between parent and child due to the divorce of Petitioner and Respondent. As above, in consideration of nationality law as applied to the daughter, Petitioner had Japanese nationality at the time of the daughter's birth and Respondent and U.S. citizenship, so the daughter has dual Japanese and U.S. citizenship. Therefore, Japanese and American law would be the nationality laws applicable. With regard to the daughter, however, it cannot be said that the nationality law of the father or the mother should similarly be applied to the daughter. Furthermore, from the time of the daughter's birth to the present time, the daughter has resided in Japan, and thus Article 28 Paragraph 3, wherein "the region with which that party is most closely connected" does not obtain in the U.S. Therefore, the permanent residence of the daughter should be considered to be Japan. Thus, the designation of the person with having custody should be construed as the person to whom Japanese law applies. Moreover, in light of the facts recited above, Japanese law should apply to the payment of child support since the daughter has Japan as her permanent residence, in accordance with the laws relating to the authority of laws for duty of support.

With regard to the demand for a solatium for the illegal acts that took place in the course of married life, given the law of the place of the act, Japanese law shall be applied because this is a demand for compensatory damages for illegal acts that Petitioner claims were done by Respondent to Petitioner in the course of married life in Japan. Given that there is an intimate connection between the illegal acts alleged by Petitioner and marital relations, the same adjudicating law as was applied to the petition for divorce should apply and, as above, the adjudicating law for the Petition for divorce is Japanese law, therefore Japanese law shall be applied in this instance, as well. Further, with

regard to the distribution of assets, since this is a financial payment occasioned by divorce, and inasmuch as it is an issue pertaining to the validity of the divorce, it is appropriate to apply the main text of Article 16 and Article 14 of the Horei, and shall be construed under Japanese law.

2 Present action

The decision of this Court is that Petitioner's demand for divorce has foundation, and orders that Respondent pay JPY 1,000,000 as a solatium for divorce and JPY8,000,000 as the division of assets. It awards full custody of the daughter to Petitioner and orders Respondent to pay JPY50,000 per month in child support for the daughter.

The following facts have been ascertained premised on Petitioner 2: 1, 2; Petitioner 7 and 8; Petitioner 10 and 11; Petitioner 14 and 15; Petitioner 21; and Respondent 1 through 5; Petitioner's deposition and the overall substance of Petitioner's oral arguments:

- (1) Although Petitioner was born in Japan and had Japanese citizenship, she filed for marriage with Respondent in Japan on March 22, 1995 and subsequently had a daughter. Petitioner acquired U.S. citizenship on April 18, 2003, made a filing to that effect on March 18, 2004, and renounced her Japanese citizenship. The daughter was born in the city of Yokosuka and from that time to the present has resided and lived in Japan.
- (2) Respondent is an American citizen and a civilian in the employee of the U.S. armed forces. Respondent came to Japan around May 1993, has been employed in U.S. military bases in Japan and has resided in U.S. military housing, and married Petitioner in Japan. Subsequently, Respondent returned to the United States and Petitioner also went to the U.S. in January 1996, residing with Respondent in Texas and then in Seattle, Washington. Respondent came to Japan again in July 1999.
- (3) Subsequent to Petitioner and Respondent's return to Japan in July 1999, they resided in U.S. military housing and their daughter was born on October 17, 2002. After Petitioner's return to Japan, she has worked in Japanese companies and for the Japan offices of a Canadian provincial government.
- (4) After the birth of the daughter, Respondent began to start quarrels with Petitioner over the upbringing of their daughter. Respondent would yell at Petitioner, insisting and that he could not obtain sufficient sleep because of the daughter's crying at night.

For her part, Petitioner, having returned to Japan as outlined above, found employment, took a maternity leave, and then resumed work in April 2003. Due to busyness at work, Petitioner found it difficult to balance both child rearing and work, but managed somehow to maintain home life, having requested assistance in child care from Petitioner's own mother. However, she soon became exhausted. As outlined above, Respondent would frequently raise his voice in anger about the daughter's care and nighttime crying, and as a result, Petitioner became depressed and developed an aversion to and developed a sense of fear of Respondent. Petitioner was informed by a psychiatrist in September 2003 and that she was depressed (PTSD), with a diagnosis suggesting that the major cause of the depression was psychological domestic violence received from the Respondent. Petitioner then began undergoing clinical treatment once a week until November 2003, and subsequently once every other week.

- (5) After the birth of the daughter, Respondent made very little effort to care for her, and had left her in bed without bathing or changing her. Moreover, notwithstanding the fact that Petitioner's mother was caring for the daughter, Respondent would make abusive claims that Petitioner's mother was trying to destroy his family and Respondent asserted that Petitioner does not trust men because her own mother is divorced. Furthermore, Respondent criticized Petitioner, saying that things were not going well between them because Petitioner was depressed, and that now that Petitioner had the daughter, she had no need of men, and that it was because of Petitioner that Respondent had no alternative other than to raise his voice in anger.
- (6) Since there was no improvement in this behavior and attitude on the part of Respondent, she left with the daughter in July 2003, going from U.S. military housing where she had resided with Respondent to her mother's place of address and since that time has lived with her daughter and her mother. The daughter has attended a day care center since April 2004 and, as indicated above, has lived with Petitioner and Petitioner's mother since July 2003.
- (7) Although Respondent had petitioned Petitioner for a mediation agreement requesting visitation with the daughter and had agreed to the terms outlined above, Respondent returned to the U.S. on July 22, 2004, has lived in the U.S. from that time until the present, and has not exercised the visitation rights agreed to in the mediation.

The facts set forth above are recognized.

In view of the ascertained facts outlined above, since the marriage between Petitioner and Respondent was recognized as irretrievably broken soon after the couple separated in July 2003, it must be said that there are serious factors that make it difficult to continue a state of marriage between the parties. According to Petitioner 4: 1 through 20, around October 2003, it emerged that Respondent was involved in an intimate, physical relationship with a woman by the name of Yuka Yonehana, and it must be said that this occurred after Petitioner and Respondent's marriage was broken.

Furthermore, in light of these facts, [the Court] recognizes that the failure of Petitioner and Respondent's marital life lies in the fact that, notwithstanding the fact that Petitioner struggled to balance work with child-rearing, Respondent would unilaterally shout at Petitioner without understanding her situation, and that Petitioner soon fell into a state of total exhaustion and depression. Clearly, against a background of these confrontations, one can assume that differences in child-rearing philosophy and other issues would arise due to differences in the environments in which Petitioner and Respondent were [themselves] brought up. However, given the fact that Petitioner struggled to balance work with child-rearing as noted above, Respondent should have been cooperative [with Petitioner] in child-rearing, and should have made efforts to talk with Petitioner about his frustrations regarding her employment. In fact, however, Respondent neglected to do this, and instead would shout at Petitioner, venting only his own dissatisfaction. [The Court] recognizes that Petitioner soon became unable to tolerate this behavior.

Therefore, Petitioner has grounds for the petitioned divorce.

With regard to the couple's daughter, in view of the facts accepted as above, the daughter has lived from birth to the present time with Petitioner; the daughter is a child who has not yet attained the age of three; Petitioner resides in Petitioner's own mother's home; as noted above, Petitioner is employed, and as indicated below, has an annual income of JPY6,550,000; and inasmuch as she is economically independent, it is appropriate [for The Court] to designate her as the custodial parent [awarding Petitioner full custody of the daughter].

Given the facts as ascertained above concerning the daughter's age, the simplified worksheet for child care and divorce expenses based on Petitioner's and Respondent's respective incomes (these figures are fully reliable because, in order to simplify child care and divorce expense computations and arrive at a rapid estimate, standard deductions have been made for public taxes and fees, work expenses, and special expenses, etc. based on the actual incomes of the obligor and obligee, and standard indices of the

obligor's, obligee's, and juvenile's living expenses have been used to arrive at a proportional division), has been calculated. As shown in Petitioner 30, [the Court] recognizes that Petitioner's 2004 income from salary was JPY6,550,000. On the other hand, according to Petitioner 29: 1, 2, Respondent's salary income is assumed as of September 2003 to have been approximately \$77,760 ($\$1,080 \times 6 \times 12$ months). The daughter's monthly child care expenses are [estimated to be] JPY40,000 to JPY60,000 (Note: according to Petitioner 9: 1, 2, as of January 2004, approximately \$78,559 ($\$5,571.60 + \$250.00 + \$175.23 + \549.74) $\times 12$ months. According to Petitioner 6, at an exchange rate of between JPY105.6 to JPY105.7 to the U.S. dollar as of March 2004, for this matter, [an exchange rate of] 1 U.S. dollar = JPT 105 was used). Although this calculation is made without confirming the various forms of compensation received by Respondent, it can be surmised that the figures would be approximately the same, even though this is an estimate. (Respondent's salary income is approximately the same according to Respondent 23: 1, 2, as well.) Based on these assumptions, and applying these figures to the worksheet, the figures also fall within the range of JPY40,000 to JPY60,000, as noted above.). Therefore, and in light of the facts as ascertained above, [the Court] deems it appropriate for Respondent to pay to Petitioner JPY50,000 per month for the daughter's child care expenses. According to the visitation agreement, Respondent agreed to pay Petitioner the sum of \$928 per month by the end of each month starting in July 2004 until Respondent and Petitioner are divorced. Since this was something that one can assume had been agreed to at the stage of the visitation agreement, it cannot be something immediately agreed to by Petitioner and Respondent as the child care expenses for the daughter.

With respect to the distribution of assets, Respondent resides in the U.S., and the assets relationship is not necessarily clear. Nevertheless, [the Court] recognizes that, according to Petitioner 22: 1, 2 and Petitioner 23: 1, 2, as of August 19, 2003, Petitioner and Respondent had in a joint USAA bank brokerage account and in mutual fund account had \$57,508.35 and \$56,792.80, respectively, and as of August 18, 2003, Respondent had \$10,473.84 in an NFCU savings account, \$18,461.24 in an NFCU checking account, and \$20,252.75 in an NFCU share certificate account, for a total of \$163,488.98. Moreover, [The Court] recognizes that, according to Petitioner 31 to 34 and Petitioner 36 that, as of May 11, 2005, Petitioner had JPY525,226 in a UFJ bank savings account in Petitioner's name, JPY407,227 in a Tokyo-Mitsubishi Bank savings account in Petitioner's name and JPY105 in a postal savings account in Petitioner's name as of May 12, 2005. [The Court] recognizes that the asset value of the movables that were picked up on or about August 15, 2003 from the building in which Pe-

tioner and Respondent resided together, according to Respondent 23: 1, 2 cannot be made and, moreover, there is no way to treat these moveable as assets subject to an asset distribution.

Respondent claims an asset distribution per Attachments A and B. However, based on Respondent 31 [the Court] recognizes the following assets:

- (a) Respondent's joint NFCU checking account with \$30,407.23 as of March 10, 2005
- (b) Respondent's joint NFCU savings account with \$83,052.94 as of March 10, 2005 (of which \$22,637 represents one-half of the amount received for the sale of the building that had been jointly owned by Petitioner and Respondent, and Respondent asserts that since this is Respondent's own asset, it should be exempt, leaving \$60,415.94 subject to an asset distribution.)
- (c) Petitioner and Respondent's joint NFCU savings account with \$14,702.04 as of March 31, 2005
- (d) Respondent's USAA Bank Roth-IRA account with \$13,751.81 as of April 8, 2005
- (e) Respondent's USAA Bank Roth-IRA account with \$628.59 as of April 8, 2005
- (f) Petitioner and Respondent's joint USAA Bank brokerage account with \$98.48 as of April 8, 2005
- (g) Petitioner and Respondent's joint USAA Bank mutual fund account with \$19,154.13 as of April 8, 2005
- (h) Child's educational savings funds account held by Petitioner with \$7,587.18 as of April 8, 2005

Of these, [the Court] recognizes \$30,407.23 of (a); \$60,415.94 of (b); \$13,751.81 of (d); \$628.59 of (e); \$98.48 of (f); \$19,154.13 of (g); and \$7,587.18 of (f), for a total of \$132,043.36. According to Petitioner 27: 1, 2 and Petitioner 28: 1, 2, the account mentioned in (f), above, had a total cash value in common and preferred stock of \$61,837.59 as of December 31, 2003, but this had fallen to \$143.01 as of December 31, 2004. Moreover, inasmuch as [the Court] notes that Respondent had on December 29, 2004 requested a transfer of \$61,900.00 from this account to another account in Respondent's name in the same bank, notwithstanding Respondent's assertions, [the Court] views [this] \$61,900 as subject to asset distribution. Thus, of the deposit credits in Respondent's name and jointly in Respondent and Petitioner's names, [the Court] views \$131,944.88 as subject to asset distribution, Respondent's assertions notwithstanding. Furthermore, with regard to the account indicated in (c), above, Respondent claims that these funds have been fur-

nished to Petitioner as child support for the daughter, so if one-half of this amount is added to the aforesaid \$131,944.88, the sum is \$80,674.48 (\$65,972.44 + \$14,702.04).

Therefore, despite the fact that not all of the assets in this matter that may be subject to an asset distribution are known since Respondent resides in the U.S., the review outlined above suggests that, as of August 2003, Respondent managed depository and other accounts with a total of \$163,488.98, while Petitioner had depository and other accounts worth JPY932,558, which at dollars exchange rate of JPY105, comes to a total of JPY18,098,901 (JPY17,166,343 + JPY932,558).

In light of the facts ascertained above, since [the Court] recognizes an equal contribution of Petitioner and Respondent's assets as constituted above, JPY9,049,450 (JPY18,098,901 ÷ 2), with a deduction of Petitioner's accounts worth JPY932,558, thus assuming JPY8,116,892. In consideration of the various circumstances outlined above, it is appropriate for Respondent to pay to Petitioner the sum of JPY8,000,000 as an asset distribution in this matter.

Further, as ascertained above, it can be said that regardless of the fact that Petitioner was exhausted as she balanced work with child-rearing after the birth of the daughter, Petitioner was shouted at by Respondent would without reason and that as a result Petitioner became depressed. Thus, Respondent has an obligation to compensate Petitioner for mental anguish. In view of the facts as ascertained above, [the Court] believes Respondent should pay a solatium of JPY1,000,000 to Petitioner. There is insufficient evidence to ascertain Petitioner's claim that subsequent to the child visitation mediation agreement, and notwithstanding the fact that Respondent failed to pay child care expenses for the daughter in accordance with the provisions of the agreement, Respondent telephoned Petitioner at her place of employment any number of times on November 10, 2004 asserting repeatedly that he had paid these child care expenses, and that as a result Petitioner suffered mental anguish.

Therefore, [the decision of this Court is that] Petitioner's petition for divorce from Respondent has grounds; full custody of Petitioner and Respondent's daughter is awarded to Petitioner; Respondent shall pay to Petitioner the sum of JPY50,000 by the last day of every month from the date this decision is entered until the daughter reaches her majority; Respondent shall pay to Petitioner JPY8,000,000 as the division of assets and delay damages at the rate of 5% per annum from the day after this decision is entered until the sum is paid in full; and a solatium of JPY1,000,000 as a solatium for illegal acts and delay damages at the rate of 5% per annum from April 20, 2004, which was the day after the complaint in this matter was served, until the sum is paid in full.

3 This is the text of the decision.

Tokyo Family Court, Family Matters, Part 6

Judge Ken'ichi Akitake

This is a certified copy.
 September 30, 2005
 Tokyo Family Court, Family Matters, Part 6
 Secretary of the Court: Fumio Mizuno

I certify that this Divorce Decree is a true and correct translation of the Japanese-language original.

Translator's Signature:

Translator's Name:

Today's Date:

Alex Kent

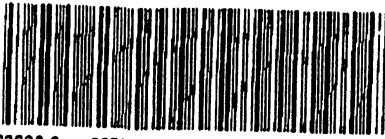
Alex Kent

October 12, 2005

Context Communications
 83 North Prospect Street
 Amherst, MA 01002 USA

On this 13th day of October, 2005,
 before me, the undersigned notary public, personally appeared
Alex Kent (name of document signer),
 proved to me through satisfactory evidence of identification,
 which were MA Driver's License,
 to be the person whose name is signed on the preceding or
 attached document in my presence.
 (official signature and seal of notary)
 My commission expires August 27, 2010

7702 6-30-2006 00000



03-3-03026-0 25721858 NACA 06-29-06

IN COUNTY CLERK'S OFFICE
FILED
A.M. JUN 29 2006 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

4 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY


5 In Re the Marriage of:) Trial Court No. 03-3-03026-0
6 PETER PAUL TOLAND,)
7 Petitioner,) NOTICE OF APPEAL TO COURT
8 and) OF APPEALS
9 ETSUKO FUTAGI TOLAND,)
10 Respondent.)

11 Peter Paul Toland, petitioner, seeks review by the designated appellate
12 court of the Order Re: Motion for Order Lifting Stay and Motion for Order of
13 Dismissal, entered on June 2, 2006.

14 A copy of the decision is attached to this notice.

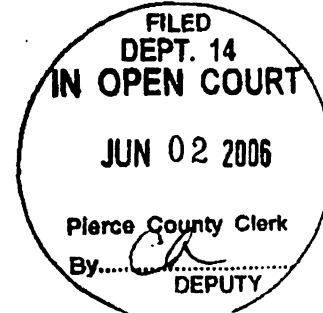
15 DATED this 28 day of JUN, 2006.

16 JOHNSON RENSHAW & LECHMAN-SU PC

17 
18 Mark Johnson, WSBA# 33477
19 markj@jrls.com
of Attorneys for Petitioner

20 MARK JOHNSON, WSBA# 33477
21 Johnson Renshaw & Lechman-Su PC
22 516 SE Morrison Street, Suite 1200
23 Portland, Oregon 97214
Telephone: 503-224-1640
of Attorneys for Petitioner

JUDY DUGGER, WSBA# 6136
Attorney at Law
P.O. Box 3463
Fairfax, Virginia 22038-3463
Telephone: 703-591-2100
of Attorneys for Respondent



SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE

In Re the Marriage of:

PETER PAUL TOLAND

Petitioner

and

ETSUKO FUTAGI TOLAND

Respondent

NO. 03-3-03026-0

ORDER RE: MOTION FOR ORDER
LIFTING STAY AND MOTION FOR
ORDER OF DISMISSAL

THIS MATTER having come before the Court upon the motion of
Petitioner for an Order Lifting Stay and upon the motion of the Respondent for an
Order of Dismissal and this court being fully advised, now, therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Petitioner's
Motion for an Order Lifting Stay is denied; and that as the conditions having been
met by Judge Cohoe's orders dated September 15, 2004 and October 21, 2005,
the entry of the Japanese Decree requires dismissal of the Washington action
and accordingly;

ORDER ON MOTION LIFTING STAY/
AND MOTION FOR DISMISSAL
Page 1 of 2

ARONOFF & MCGORAN, P.S.
A PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
202 PROFESSIONAL CENTER - 202 SOUTH 348TH STREET
FEDERAL WAY, WASHINGTON 98003-7002
SEATTLE (253) 836-3710 (253) 874-0189
TACOMA (253) 952-5696 FAX (253) 874-8005
*ALSO ADMITTED IN CALIFORNIA

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the above
2
3 captioned matter is dismissed with prejudice and without costs.

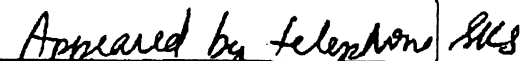
4 DONE IN OPEN COURT on this the 2nd day of June, 2006.

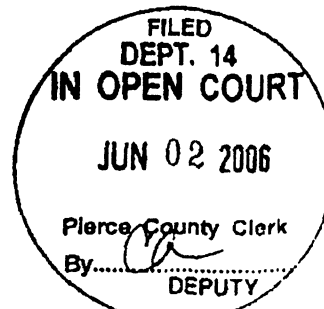
5
6 
7 JUDGE SUSAN K. SERKO

8 Presented by:

Approved as to form, notice of
presentation waived:

9
10
11 
12 JOSEPH J. MCGORAN #5724
ATTORNEY FOR RESPONDENT

13
14 
15 JEFFREY F. RENSHAW #31124
16 ATTORNEY FOR PETITIONER



ORDER ON MOTION LIFTING STAY/
AND MOTION FOR DISMISSAL
Page 2 of 2

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*ALSO ADMITTED IN CALIFORNIA

CERTIFICATE OF SERVICE

I certify that on February 16, 2007, I sent a true and correct copy of the
Brief of Respondent by first class mail, postage prepaid, to:

Mark Johnson
Johnson, Renshaw & Lechman-Su PC
1200 Weatherly Building
516 SE Morrison Street
Portland, Oregon 97214

Dated: February 16, 2007

Anne Watson
Anne Watson, WSBA #30541

07 FEB 16 PM 2:31
STATE OF OREGON
BY [Signature]
DEPUTY
COURT REPORTERS
DIVISION II